
(1998) 05 J&K CK 0051
In the Jammu And Kashmir High Court
Case No : Writ petition No. 82 Of 1998

Ghulam Muhmad Reshi and others	Vs	APPELLANT
State of J&K and others		RESPONDENT

Date of Decision : 01-05-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Jammu and Kashmir Combined Examination Rules — Rule 8, 9

Citation : (1998) KashLJ 621 : (1999) 1 SriLJ 25 : (1999) SriLJ 25

Hon'ble Judges : M.Y.Kawoosa, J

Bench : Single Bench

Advocate : M.Abdul Qayoom, G.Ali, Advocates appearing for the Parties

Judgement

1. The petitioners eight in number, are stated to have been candidates for the combined competitive examination for direct recruitment to various services in the State of Jammu and Kashmir, conducted by the J and K Public Service Commission in pursuance of Notification No:PSC/Ex95/59 dated 14091995. They seem to have qualified the preliminary Examination, but have failed to make the grade in the written examination part of the main examination, thus disentitling them to be called for the interview, the second part of the main examination. It is stated that the interviews are still going on. They have come to this court in a bid to obtain some order from the court, at the first stage, so as to be able to appear in the interviews. Notice of this petition was given to the respondents. They came to be represented by Mr.G.Ali, Government Advocate, who has filed objections. Meanwhile, petitioners moved an application seeking a direction against the respondents to call them as well for the interviews, being conducted by the public service commission.

2. I have heard learned counsel for the parties on the admission of this petition itself because the decision on the admissibility of the writ petition

would govern, to a large extent, the application for issuance of interim direction, as sought by the petitioners.

3. Before advertng to the pertinent facts as unfold in the writ petition and the objections there to, and the points raised during the course of

arguments, I deem it appropriate to give a resume of the rules and procedures in vogue and governing the subjectmatter.

4. Rules 10A of the Jammu and Kashmir Public Service Commission (conduct of Examination) Rules 1973 issued by the commission vide

notification No.PSC/E7'V 130 dated 30th October, 1973 deals with the Examinations. The Rule is extracted below.

Rule 10A of the Examination rules:

Where the commission consider that the number of applications received for admission to a competitive examination is unduly large, it may direct

the candidates to appear in a written screening test..... Only such candidates as qualify in the test by such standards, as may be fixed by the

commission, shall be admitted to the main written examination.

Vide notification SRO 161 dated 17th July, 1995, the government of Jammu and Kashmir promulgated the rules, framed by the Governor under

section 124 of the State Constitution for purposes of the conduct of combined competitive Examinations for direct recruitment to various services

and posts in the pay scale of Rs.21253600 (old) shown there in. Rule 8 of these Rules deals with the Examinations, It envisages that the

examination shall consist of two successive stages, namely:

1. combined service (preliminary) examination (objective type) for the selection of candidates for the main examination, and

2. combined services (main) examination (written and interview) for the selection of candidates for the various services and posts subrule (ii) of

Rule 8 states that the preliminary examination is meant to serve as a screening test only. It further provides that only those candidates who obtain

such minimum marks in the preliminary examination, as may be fixed by the commission at its discretion and are declared by the commission to

have qualified in the said examination in a year, will be eligible for admission to the main examination of that year. The marks obtained in the said

examination are not to be counted towards determination of the 'final order of merit. This provision of the rules of 1995, as can be seen, is

synonymous to rule 10A of the 1973 rules, extracted hereinabove. The object being only that of short listing. However, the discretion conferred

upon the commission vide subrule (ii) of Rule 8 Of the 1995 Rules is not absolute and unguided. The subrule itself envisages and provides that such

discretion shall be exercised to the extent of limiting the number of candidates for admission to the main examination twelve to thirteen times the

total approximate number of vacancies to be filled in the various services and posts. However, there is no dispute raised by counsel for the

petitioners on this part of the examination or the rule position thereon.

5. Subrule (iii) of rule 8 of the 1995 rules provides that:

The main examination will consist of a written examination and an interview test.....

And subrule (iv) of the above rule reads as under:

"(iv)""Candidates who obtain such"" minimum qualifying marks in written part of the main examination, as may be fixed by the commission in any or

all the papers at their discretion shall be summoned by them for an interview,

Here the learned counsel for the petitioners, during the course of arguments, has sought to make out a point that, whereas subrule (i) of rule 8

envisages only two stages of the examination, the first being the preliminary examination (screening test and the second being the main examination

(written and interview test), a third stage is sought to be introduced by subrule (iv) of the same rule whereby a candidate is prevented from

completing the main examination. In other words, his argument is that when a candidate is declared to have qualified the preliminary examination,

he has of necessity to be allowed to appear in both the written examination as well as interview test, the two parts of the main examination. His

contention is that the main examination is not complete unless a candidate is allowed to appear in both tests viz the written and the viva voce. In this

connection, he has taken support from section 10 of the rules of 1995 which reads as under:

10. Marks thus obtained by the candidates in the main examination (written part well as interview) would determine their final order of merit...'7

Developing his argument, he has contended that rule 10 makes it clear that the

final order of merit has to be determined only when the candidates are allowed to complete the main examination, allowing them to appear in the written examination as well as the Interview. According to him that being the spirit of the rules, rule 9 of the rules entitling the commission to restrict the number of candidates for interview not more than thrice the number of vacancies to be filled, is ultra vires the constitution, offending Article 14 thereof and, therefore, liable to be declared as such. This was the main thrust of the argument of learned counsel for the petitioners.

6. For facility of reference, Rule 9 of the rules is quoted hereunder:

9. The number of candidates to be summoned for interview will not be more than thrice the number of vacancies to be filled. The interview will carry a maximum of 250 marks (with no minimum qualifying marks). Failure to appear in the interview shall render a candidate ineligible for being recommended for appointment notwithstanding the marks obtained by him in the written examination." considering the arguments of the learned counsel for the petitioners and the interpretation sought to be given by him to the express provisions of the rules, the matter involved is more of academic nature than any result oriented one to the liking and wishing of the petitioners.

7. The object of subrule (ii) of rule 8 of the 1995 rules, in conformity with rule 10A of the 1973 rules, undoubtedly is that of short listing. However, whereas rule 10A of the 1973 rules had given an absolute discretion to the commission in this behalf, subrule ii of rule 8 (supra) is not so, it lays down the norms for the exercise of such discretion. The discretion vested in the commission with respect to short listing is guided by the fact that number of candidates for admission to the main examination is required to be limited to twelve to thirteen times the number of total vacancies.

8. There can be no two opinions about the fact that the written examinations are the only method to determine the general ability, efficiency and intelligence of candidates. Object of the combined competitive examinations is always to select the best of the lot. Written examinations not only give a scientific mechanism of short listing, but provide an opportunity to offer tight scrutiny to judge the best candidates. This is a method on which comparatively more reliance can be placed.

9. A bare perusal of subrule (iv) of rule 8 would show that a discretion is vested

with the commission to fix the minimum standards the achievement whereof would entitle a candidate to be called for interview. In other words, the commission is vested with the power to make classification amongst the candidates appearing in the written part of the main examination. The petitioners in this petition have not challenged the power of the commission vested in it for making such classification. They have rather relied on it, as would be clear from a reading of the prayer clause. The aforesaid power vested in the commission guided and bridled by rule 9 of the rules. While exercising its discretion, the commission is required to fix the minimum marks in the written examination to limit the number of candidates corresponding to three times the number of vacancies to be filled.

Once the commission exercises its discretion under subrule (iv) in accordance with the mandate of Rule 9 of the rules, it cannot be said that the commission has done anything wrong or contrary to the rules or has exercised a power not vested in it. The classification of candidates guided by the mandate of rule 9 of the rules is reasonable and has an intelligible nexus with the object, that is, not only short listing but separating wheat from chaff. The commission is well within their bounds to fix the minimum marks termed as "qualifying marks" the possession where of would entitle a candidate to be called for interview, the second part of the main examination. Entitlement to be called for such interview is definitely subservient to the performance of a candidate in the written examination. That such a discretion is vested with the commission is further fortified by rule 9 itself insofar as it envisages that no minimum qualifying marks shall be fixed in the interview part of the main sounds illogical and unnatural that a candidate not able to perform upto the standards fixed by the commission in the written examination should also be called for interview. No doubt the examination consists of two parts, but the sheet anchor or the success of a candidate always is his performance in the written examination which actually is the principal constituent of a competitive examination. Hypothetically, I may say, that if a candidate obtains just 5 to 10 marks in the written test, or any number of marks below the fixed or qualifying marks, can it be expected of him to make the final grade. Even if that is possible, and a candidate is allowed to appear in the interview, it would make the process of written examinations redundant. Reliance on the written

examination to a large extent also is necessary to obviate the possibility of allegations of maneuvers and manipulations being levelled against the experts interviewing the candidates.

10. Another important aspect of the matter is that in case rule 9 of the rules is removed, as is prayed for in this petition, it would leave the commission with unbridled powers in the exercise of its discretion vested under subrule (iv) of rule 8 of 1995 rules. That, I may say, has not been the intention of the framers of the rules.

11. Further, in case the contention of learned counsel for the petitioners, that all the candidates who appear in the written examination of the main examination should be allowed to appear in the interview test, is accepted, it will create chaotic conditions for the commission. If we look to the facts of this case for a while, it will give an idea that subrule (iv) has aptly been framed which gives the best available mechanism to serve the purpose of picking up the best amongst the lot. The present system I have considered in depth. The rules envisage a three tyre system, first is the preliminary examination. In the main examination it is by itself a two tyre system, that is one who comes upto the marks in the written examination only becomes entitled to be called for interview. In case the contention of learned counsel for the petitioners is allowed, then the main examination will be only one tyre system and that dependent on viva voce which cannot wholly and solely be relied on. In the present case, the vacancies to be filled up were only 226 and 21,715 candidates in all had applied for the examination. Preliminary examination was conducted in which 16,045 candidates appeared. The result of the preliminary examination was declared on 23.4.1996 and total of 3,458 candidates were declared for admission to the main examination this figure exactly is thirteen times the number of vacancies, as provided by subrule (ii) of rule S. These candidates, in terms of rule 7, were required to apply again alongwith prescribed application form. Only 3,381 applications were received by the commission, However, on scrutiny of these forms, only 3270 candidates were allowed to appear in the written examination, including 13 candidates appearing under court orders. Out of these, only 772 candidates qualified for the interview. The purpose of giving these details here is only to say that if the mechanism of shrinking the number of candidates is not

resorted to, it will make a mess of the examinations which are competitive in nature. The interview test is intended to judge the mental caliber, aptitude, personality and general knowledge of the candidates. It cannot be a substitute, absolute or otherwise, to judge the intellect of a candidate required to man high positions in the hierarchy of state machinery.

12, Reference to the words "order of merit" occurring in Rule 10 of the Rules, as made by the learned counsel does not, in any way, come in

conflict with the discretion vested with the commission under subrule (iv) of rule 8 guided by rule 9 of the rules. Merit has not to be confused with

the general result of an examination. The word "merit" connotes a worthy standing as distinct from the word "result" which 'could even be a failure.

Merit also conveys the meaning of an outstanding performance, demanding a reward, as in the instant case, a call for interview. As a natural

corollary, the word "merit" itself calls for fixation of a cut off point in the general result, which in the rules is defined as "qualifying marks". In this

view of the matter, reliance placed by Mr. Qayoom on Rule 10 of the rules to make out his point is misplaced and untenable.

13. In light of the above discussions, I hold that subrule (iv) of rule 8 of the 1995 rules vests a power with the commission to fix the minimum

qualifying marks required to be obtained by a candidate in the written part of the main examination, at its discretion and such discretion is not

absolute, but is guided by rule 9 of the rules. The classification thus made is reasonable, having an intelligible nexus with the object of selecting the

candidates with outstanding performance and merit. Rule 9 of the rules is held to be intra vires and not ultra vires the constitution. The rules are

perfect and compact.

14. Petitioners herein have, inter alia, prayed for striking down rule 9 of the J and K conduct of combined competitive examination rules of 1995.

Seeking to pick up the thread from this relief, it is further prayed that the result notification No. PSC/ EX97/91 dated 20.12.1997 and the entire

selection process resorted to by respondent No. 2 be quashed. They have also prayed that the petitioners be declared to be eligible to appear in

the interview. As I have held above, there is no defect in the rules or the exercise of power and discretion by the commission in the instant

examination/selection process, therefore, the main plank of attack of the petitioners goes. Rather the earth underneath the petitioners edifice sought to be raised in this petition is removed, as such, it has to crumble down.

15. Petitioners have stated that some of the candidates, impleaded as respondents 3 to 8 in this petition, did not figure in the result notification of preliminary examination, yet they figure in the result sheet of the main examination (written) issued by respondent No. 2. Therefore, according to them, the result are being manipulated. Mr. G.Ali, Government Advocate has produced a copy of the original result sheet of candidates declared to have qualified the main (written) examination and has stated that these respondents do not at all figure in the .said result sheet. This has simply given a rebuff to the whining claim of the petitioners. Identical are in nature the other statements and submission made in the petition which however, were neither referred to nor relied upon by learned for petitioners during the course of arguments. For the forgoing, the petitioners have failed to make out a case for admission of the writ petition. Consequently, they are also not entitled to any interim relief by way of which they wanted to further participate in a process quashment where of they sought too. The result is that the petition is dismissed.