
(2014) 12 J&K CK 0043
In the Jammu And Kashmir High Court
Case No : SWP No. 487 Of 2009

Hamid Ullah Dar and Others	Vs	APPELLANT
State of JandK and Others		RESPONDENT

Date of Decision : 31-12-2014

Acts Referred:

Citation : (2015) 2 JKJ 686

Hon'ble Judges : Hasnain Massodi, J.

Bench : Single Bench

Advocate : M.A. Qayoom, Advocate, for the Appellant; S.A. Naik, Senior A.A.G., B.A. Zargar, T.H. Khawja, S.R. Hussain and Shiekh Mushtaq, for the Respondent

Final Decision : Disposed off

Judgement

Hasnain Massodi, J.â?"Petitioners responded to Advertisement Notice No. 09 of 2005 dated 14th December 2005 and No. 04/2008 dated 25th

May 2008, issued by J & K Services Selection Board (hereinafter ""Board""), inviting applications from eligible candidates for posts of Naib

Tehsildars', lying vacant in Revenue Department of State Government. They appeared in the written test conducted by the Board on 22.02.2009.

Aggrieved that a good number of questions in question-booklet, the aspirants for advertised posts were required to answer were either

wrong/vague or with more than one correct options or incorrect answer, petitioners immediately after the written test was held and selection

process yet to be finalized came up with writ petition on hand. Petitioners, identified wrong/vague questions-and questions more than one correct

answers or with incorrect options in Para 7 of the petition. Petitioners on the strength of averments made in the petition sought quashment of

written test, and conduct of fresh examination. Petitioners, in alternative, sought a direction to respondent Board to add marks for questions

identified in Para 7 of the petition to their score, conduct their interview and recommend them for appointment. Prayer for constitution of a

Committee of Expert to examine identified question, was also made in the petition.

2. The Board during pendency of Writ petition on 8.9.2009 issued Provisional Select List, constraining petitioners to lay motion, being CMP No.

2790/2009, for grant of leave to amend petition and assail the Selection made by the Board. The application was allowed on 27th April, 2010.

Petitioners filed amended petition on 07.04.2010. Petitioners insisted that selected candidates were given credit for wrong/Vague questions, with

incorrect options or questions with more than one correct answer and on the basis of marks awarded, they were included in the Select List. It was

pleaded that whole exercise stood vitiated because of discrepancies highlighted in the petition. Petitioners, on the strength of averments made,

sought quashment of Select List dated 8th September, 2009, Constitution of a Committee of Experts to examine the questions and options as

detailed in the petition and in the event Committee so constituted declared questions wrong/vague or with incorrect option, to set-aside entire

examination and direct respondent Board to conduct fresh examination and prepare a fresh Select List based on the merit secured by candidates in

such examination.

3. In the meantime, respondents 1 & 2, acting on selection and recommendation made by the Board, issued appointment orders in favour of

selected candidates, impleaded as respondents 4 to 110 in writ petition. Petitioners laid a motion registered as CMP No. 797/2009 praying that

appointment of respondents be kept in abeyance. Application was disposed of on 22nd December, 2010 with a direction that appointment orders

of private respondents shall remain subject to outcome of writ petition. Let us now advert to stand taken by respondents in opposition to Writ petition.

4. Respondents 15, 58, 59, 60, 62, 63, 64, 69, 70, 71, 77, 85, 86, 101, 106, 107, 109 & 110, appeared after admission, but opted not to file

any counter affidavit. Their right to file counter was closed on 20th March, 2014.

Some of respondents i.e. 10, 11, 14, 21 to 25, 73, 75, 83, 92 to 96, 98, 99 & 104, approached at a later stage of proceedings with an application for setting aside ex parte proceedings. Application did not meet success and was dismissed on 8th August, 2014. However, all respondents represented by Mr. S.R. Hussain, Advocate and Mr. Z.A. Qureshi, Advocate, were heard and detailed arguments addressed by their Counsel.

5. An effort was made by one Sh. Abdul Rashid Mir S/o. Late Ghulam Hassan Mir R/o. Salar, Pahalgam, appearing through Shiekh Mushtaq, Advocate, to join as petitioner. The application being, CMP No. 1412/2013, was disallowed on 12th May, 2014.

6. Respondent Board, in its reply, filed on 26th May 2009, opposed writ petition on the ground that right course for petitioners was to approach Board with a representation, identifying wrong/vague questions or questions with wrong answers and not to invoke writ petition jurisdiction of the Court. Board maintained that none of questions identified in petition, except question No. 113, was wrong/vague. It denied that options given did not reflect correct answers to the question identified in the petition. The reply dealt with each and every question as identified in the petition and justified such questions and answers given on the ground that such questions found place in examinations conducted by Union Public Service Commission and other such institutions.

7. Respondent No. 1, in its reply, did not take a stand as regards questions labeled as wrong/vague or with wrong answers or multiple correct answers in the petition. It was, however, pleaded that 29 out of 110 selected candidates had not passed Urdu as one of subjects in Matriculation, and were appointed as Naib Tehsildars vide order No. FC(A) 66 of 2010 dated 10th April 2010, after Administrative Department vide letter No. Rev-NGN/118/09 dated 2nd March 2010, granted relaxation in their favour.

8. Board, in its reply to amended petition filed on 28th December 2011, reiterated its stand taken earlier in reply to writ petition.

9. Petitioners in their supplementary affidavit filed on 31st January, 2012 in response to reply filed by respondents, reiterated that as per answer

key obtained by petitioners on 14th December 2011, under Right to Information Act, that 08 question, admittedly, have been evaluated wrongly

and the points awarded to the prejudice of petitioners. Petitioners appended

answer-key provided by Board as Annexures E & B to petition.

10. On 10th October 2012, this Court in view of controversy involved, constituted a Committee of Experts to examine the questions identified as

wrong/vague or with wrong answers/multiple correct answers and submit its report for further consideration of the Court. The Committee

submitted its report on 1st of May 2013 and 17th July 2013, and is placed on record. The parties were given access to Committee report,

enabling them to formulate their response.

11. I have gone through pleadings as also record made available on file and have heard learned counsel for parties.

12. Facts are not in dispute. It is admitted case of parties that petitioners as well as respondents 4 to 110 participated in selection process initiated

vide Advertisement notice in question. It is also admitted that petitioners voiced reservations, regarding question Nos. 32, 42, 64, 66, 80, 83, 84,

94, 95, 105, 113, 115 and 3, 31, 35, 47, 70, 71, 106 & 107 and that questions identified related to Geography, Economics, History and Political

Science and Environmental Science.

13. The Experts Committee, comprising of Professors/Head of Departments of Political Science, Geography, Economics, Environmental Science

and History, was, constituted with the consent of counsel for the parties to examine questions identified in Para 7 of the petition and report whether

questions were wrong/vague or with multiple correct answers and correct answer did not tallying with Answer Key as claimed by petitioners or the

questions did not suffer from any such infirmity, discrepancy and rightly found place in question booklet.

14. It may be stated at the cost of repetition that orders dated 10th October 2012 and 31st May 2013 whereby Expert Committees were

constituted were passed on consensus of counsel for parties. Board and other official respondents duly represented by their counsel, therefore, are

to be taken to have consented not only to constitution of Committee but also to its composition and to have bound down parties to abide by report

submitted by Committee. It is neither open to the parties to question correctness of Expert Committee report nor has the report been assailed by

either of the parties.

15. A closer look at pleadings would reveal that amongst the questions identified

as wrong/vague, with wrong option or multiple correct answers,
question Nos. 70, 71, 72, 80, 94 & 95 of question Booklet related to History;
question Nos. 09, 106 and 109 relate to Political Science; question
Nos. 31, 32, 42 & 52 of question booklet (Series-D) pertain to Environmental
Science, while question Nos. 3, 64, 66, 84, 105, 107, 113 & 115
relate to Geography and questions 83, 111, 35, 47 to Economics.

16. The Experts Committee comprising of Professors/HODs of Political Science,
Geography, Economics, Environmental Science and History

have declared 23 out of 25 questions identified in the writ petition and referred
to the Committee, as wrong/vague with multiple correct answers or

the answers given in the key not correct answers. The rest of the referred
questions i.e. Question Nos. 66 and 94 have been found by the Experts

Committee to be correct with correct answer given in the Answer Key. Copy
whereof as already stated has been procured by the petitioners

under Right to Information Act and placed on file.

17. The Question Booklet comprised of 120 questions. All the questions carried
equal marks. The number of questions declared by the Experts

Committee as wrong/vague, with multiple correct answers or the correct answers
and not corresponding to answers given in the Answer Key

represents about 20 per cent of the questions asked. Thus the wrong/vague
questions or questions with more than one correct answer or with

incorrect answers given in the answer key, therefore, constitute a significant part
of the total number of questions asked. It has been pointed out

that the questions identified in the petition and claimed by the petitioners to be
wrong/vague with more than one correct answer or correct answer

not corresponding to Answer Key were referred to the Experts Committee with
the consent and on agreement of learned counsel for the parties.

The learned counsel did not only agree on reference of aforementioned questions
to the Experts Committee but also were in agreement on

composition of the Committee.

18. The findings returned by the Experts Committee therefore are in the facts
and circumstances of the case binding of the parties. This apart the

members of the Experts Committee because of the position they occupy in their
respective disciplines and departments i.e. Professors and HODs,

leave no option but to respect the opinion rendered. It would not be open, in

facts and circumstances of the case, to put a question mark on the opinion given more so when the parties have volunteered not to dispute the opinion and decided to abide by the Experts Committee report.

19. Having said so, the Experts Committee report, having regard to the ratio of wrong question, questions with more than one correct answers or correct answers not tallying with the Answer Key and the questions free from any challenge i.e. 23:97, is to impact the selection in a significant way. It is pertinent to point out that all the candidates selected in open category have secured marks between 94.34 and 118.17 of the selected candidates have secured marks between 94.34 and 95, 26 candidates between 95 and 100, 13 candidates between 100 and 104. Same is true about the reserved category candidates. In case of Scheduled Caste, the selected candidates have secured marks between 88.33 and 93 and in Scheduled Tribe category between 86.67 and 92.33. In Reserved Backward Category, position is no different as all the candidates fall within the range of 90.00 to 94.67 marks. Having regard to the fact all the selected candidates fall within a narrow range, credit given to the selected candidates on account of 23 wrong answers, more than one correct answers or correct answers not tallying with the Answer Key assumes importance and is to impact selection of all the candidates appearing in the impugned select list and the appointment made on the basis of select list.

20. The above situation, leaves one guessing whether those selected or one or more of them would have found place in the select list had 23 questions declared as wrong/vague, with more than one correct answers or the correct answers not tallying with the Answer Key, not included in the question paper, or put correctly or the answers given in the answer key tallied with the correct answers.

21. Let us assume that the topper in the select list awarded 23 marks for 23 wrong questions, with more than one correct answer or answers not tallying with the Answer Key, has been given credit for all the 23 questions and awarded 23 marks. His merit will come down to 95, if 23 questions are deleted and in such a case, the merit of last selected candidate would come down to 71.34. In case petitioners in the writ petition on hand (SWP No. 487/2009) did not attempt any of the 23 wrong questions with more than one correct answers or correct answers not tallying

with the Answer Key, then any one of them may get marks more than the last selected candidate. To sum up, having regard to the ratio of

wrong/vague questions, with more than correct questions, or the answer not tallying with the answer key (23:97), with correct questions, the select

list does not truly and correctly represents the merit of those who competed for the advertised positions and participated in the selection process.

22. The question arises as to the fall out of the above discussion on the select list impugned, in the petition and the appointments made on the basis

thereof. One of the options available is to set aside and quash the examination, direct the Board to conduct written test afresh, prepare select list

based on the merit secured by the candidates appearing in the written test and make recommendations accordingly to fill up the vacancies in

question. First advertisement notice issued by the board to fill up 52 vacancies was issued way back on 01.06.2002. The selection process was

not finalized and with the reference of further 39 posts to the Board, a fresh advertisement notice was issued on 12.12.2005. Selection process

again remained to be finalized. Availability of 20 more posts due to retirements and promotions in the Department led to advertisement notice

dated 26.05.2008. The selection process in the circumstances to fill up the available posts was initiated more than 12 years back.

23. It would not be just and proper in the circumstances to quash the written test. In similar circumstances, the Apex Court in *Rajesh Kumar and*

Ors. Etc. v. State of Bihar and Ors. Etc., Civil Appeal Nos. 2525-2516 of 2013 decided on 13.3.2013, disapproved quashment of examination

and directing a fresh examination. Hon'ble Supreme Court held the power of writ court to mould the relief to be well recognized and available to

writ court to do complete justice between the parties. In the present case also, complete justice can be done between the parties without

quashment of the examination held on 22.2.2009.

24. The Board can be asked to delete 23 questions from the Test Booklet, identified in the writ petition and declared as wrong/vague, with more

than one correct answers or the correct answers not tallying with the Answer Key, evaluate merit of the selected candidates and petitioners in the

present petition or such of the petitioners who questioned the written test, without participating any further in the selection process and before the

provisional selection list was issued on 8.9.2009, on the basis of their performance, taking the written test to comprise of 97 questions i.e. 120

questions less by 23 questions, held by the Experts Committee to be wrong/vague with more than one correct answers or correct answer not

tallying with the answer key. Such of the candidates who participated in the selection process after the written test was conducted on 22.2.2009

and questioned the written test thereafter or did not question the written examination, are to be ignored as they after their failure to question the

written examination before participating any further in the selection process or waiting for selection process to get finalized, cannot be allowed to

turn around and question the written examination or selection process. This would be in tune with law laid down in *Ramesh Chandra Shah and Ors. v.*

Anil Joshi and Ors. reported in Civil Appeal Nos. 2802-2804 of 2013 decided on 3.4.2013. It would be advantageous to extract Paras 18 and 21 of

the judgment.

.....18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the

method of selection and its outcome

21. In *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, a three-Judge Bench ruled that when the petitioner appeared in the

examination without protest, he was not entitled to challenge the result of the examination.

25. The same view was reiterated in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, in the following words:

The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as

well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only

because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview,

they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the

result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the

Selection Committee was not properly constituted. In the case of *Om Prakash*

shukla v. Akhilesh Kumar Shukla it has been clearly laid down by a Bench of three learned Judges of this court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

26. I am conscious that one of the options available to the Court, as laid down in Rajesh Kumar and Ors. case (supra), is to direct re-evaluation of question paper and thereafter, redraw the merit list. However such an option may not be available in the present case, as a number of questions have been declared as wrong/vague. Had it not been so and the only ground urged in the petition that some of the answers given in the Answer Key were incorrect, the respondent Board could very well be asked to re-evaluate the answer-sheets on the basis of correct answers.

27. Plea that some of the selected candidates (29 candidates) have not passed Urdu as one of the subjects at Matriculation level and therefore were not eligible for selection/appointment as Naib-Tehsildars is destined to fail, at least for the present, as the State Government vide No. Rev-NGN/118/09 dated 2.3.2010 granted relaxation in favour of the appointees subject to the conditions laid down therein. The argument that such appointees did not fulfill the conditions subject to which relaxation was granted or that any examination conducted thereafter was only an eye wash, cannot be examined in petition on hand, in absence of specific pleadings. Any one aggrieved that the 29 appointees granted relaxation, failed to comply with the conditions subject to which relaxation was granted or that conditions were treated as mere formality by the official respondents, would be free to question their appointment, bring to the notice of the Court facts in support of such plea.

28. It is stated by the learned counsel for the petitioners it though the selection impugned in the writ petition on hand (SWP No. 487/2009), has been questioned in as many as 22 other writ petitions on various grounds, petitioners in SWP No. 487/2009 all are only aspirants for advertised posts, who have assailed the written test and identified wrong/vague questions, with more than one correct answers or the correct answers not tallying with the Answer Key in the question paper, immediately after the test

was conducted and without participating any further in the selection process or waiting for its finalization. It is stated that though 31 petitioners in 12 other writ petitions have questioned the written test on the grounds similar to the grounds set out in the writ petition on hand, yet such petitions have been filed after the petitioners participated in the selection process but failed to make it to the selection list. Such of the petitions, it is pointed out cannot claim the benefit in view of law laid in Ramesh Chandra Shah and Ors.' case (supra).

29. Learned counsel for the petitioners states that as only 6 aspirants for the advertised posts (petitioners in writ petition on hand) have thrown challenge to the written test and sought its quashment well in time, they can be directed to be appointed against the available vacancies without disturbing the selection made. Reliance in this regard is placed on the view taken by this Court in Sudesh Pandita v. State of J & K (Writ petition No. 398/1992) rendered on 2.4.1998, upheld by the Division Bench in LPA No. 61/2001 on 27.3.2003 and by the Apex Court in Special Leave to Appeal (Civil) Nos. 21149/2003 on 10.11.2000. Support is also sought from law laid down in H.C. Puttaswamy and others Vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and others, and relied upon in Sudesh Pandita's case (supra) and Ashok Gowda v. State and Ors. Wherein it has been held that "only petitioners should be considered for appointments, even if, there are candidates with higher merits who have not approached the Court".

30. The case sought to be pressed into service by learned counsel for the petitioners to persuade the Court to command official respondents to appoint the petitioners as Naib-Tehsildars against the available vacancies, is of no help to petitioners. It is important to note that in the reported cases, the petitioners participated in the selection process and claimed to be more meritorious than the selected candidates. The Court on examining the claim, and directed their appointments without disturbing the selection of less meritorious candidates. In the present case, no such claim is made. Petitioners have not participated in the selection process beyond the written test and assailed the written test on the ground that a good number of questions were wrong and the question paper therefore deserved to be quashed and written test directed to be conducted afresh.

31. In said backdrop, it may not be appropriate to issue a writ of Mandamus commanding respondents to appoint the petitioners without

evaluating their merit as also that all the selected candidates on the basis of their response to 97 admittedly correct questions. The performance of

petitioners as also selected candidates remains to be known. Therefore, the only direction that would be just and proper in the facts and

circumstances of the case is one set out in preceding Para (Para 25). However, in case, it is impossible for respondents 1 to 3, for any valid

reasons, or reasons beyond their control to embark on such exercise, they would be free to appoint the petitioners against available vacancies of

Naib-Tehsildars in direct recruitment Quota in accordance with the rules, as the petitioners cannot be deprived of fruits of litigation because of

failure on the part of the respondents 1 to 3 to comply with direction. For the reasons discussed, the writ petition is disposed of with the following

directions:-

(i) The respondent Board shall delete 23 questions i.e. question Nos. 3, 9, 31, 32, 35, 42, 47, 52, 64, 70, 71, 72, 80, 83, 84, 95, 105, 106, 107,

109, 111, 113 and 115 from the question paper and thereafter assess and evaluate performance of petitioners in SWP No. 487/2009 and the

selected (now appointed) candidates-respondents 4 to 110, as if the question paper comprised of 97 questions only. The respondent Board

thereafter shall prepare category wise merit list, redraw the select list and recommend the candidates on the basis of merit for appointment as

Naib-Tehsildars accordingly. The exercise shall be completed within four weeks from the date of receipt of copy of this judgment.

(ii) The respondent No. 1 and 2 acting on the recommendations so received shall consider appointment of candidates recommended, thereafter, in

accordance with rules within four weeks.

(iii) The selection list dated September 8th, 2009 and the appointment orders) issued on the basis of the selection list to the extent of such of the

selectees/appointees who do not find place in the redrawn Select list shall stand quashed.

(iv) The Seniority of such of selectees/appointees (respondents 4 to 110) who find place in the redrawn selection list shall remain unaffected by

the exercise to be undertaken by the respondents 1 to 3 in compliance of this

judgment.

Disposed of.