
(2019) 09 J&K CK 0075

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1224 Of 2013

Haseena Akhtar

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 18-09-2019

Acts Referred:

Citation : (2019) 09 J&K CK 0075

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Asifa Padroo, N.H. Shah, Mir Suhail

Final Decision : Disposed Of

Judgement

Sanjeev Kumar, J

1. Respondent no.2, vide Advertisement Notice No.07 of 2010 dated 12th November 2010, invited applications for the post of General Line Teacher for various Districts including District of Pulwama. The category-wise breakup of the post was: OM - 79; SC - 12; ST - 14; RBA - 28; ALC - 04; and OSC - 02. The prescribed qualification for the post as indicated in the advertisement notification was as under:

"10+2 preference will be given to the candidates having higher qualification and those having passed B.Ed./M.Ed and diploma in ETT/NTT"

2. Respondent Board, with a view to making the selection, adopted the following selection criteria:

- | | |
|----------------|------------------------------|
| I. 10+2 | 25 posts (on pro rata basis) |
| II. Graduation | 10 posts (on pro rata basis) |
| III. ETT/NTT | 05 posts (on pro rata basis) |
| IV. B.Ed. | 15 posts (on pro rata basis) |

V. Post-Graduation	10 posts (on pro rata basis)
VI. M.Ed.	10 posts (on pro rata basis)
VII. M. Phil.	02 posts (across the board)
VIII. Ph.D. after M.Phil or	03 posts (across the board)
IX. Ph.D. (direct without M.Phil)	05 posts
X. Viva Voce	20 points
Total	100 points

3. Petitioner, being eligible as per the advertisement notification, submitted her application form for the notified post and claimed the benefit of Reserved Category of Other Social Caste (OSC). Amongst others, respondent no.5, namely, Bilal Ahmad Kumar, too had applied under OSC Category. The petitioner participated in the selection process. On the conclusion of the selection process, respondent no.2 initially issued Tentative Select List, in which petitioner figures at Serial no.01 in the Wait List of OSC Category, and Nelofar Jan and Wahid ud din Ahanger, were placed in Select List at Serial no.1&2 respectively under OSC Category. So far as respondent no.5 (Bilal Ahmad Kumar) is concerned, because of his higher merit, he was placed at Serial no.28 in the Select List of the Open Merit Category candidates. The placement of respondent no.5 in the Open Merit Category was primarily due to awarding of 02 points for the qualification of M. Phil, the said candidate had obtained from Singhania University. The aggrieved candidates filed their objections to the Tentative/ Provisional Select List and the same were considered by respondent no.2 on their merit. There was some dispute raised by some candidates with regard to the Degrees of M.Phil and M.Ed., obtained by some of the selected candidates from Singhania University, Rajasthan. A decision was taken by the respondent-Board to give weightage to M.Phil Degrees obtained from Singhania University through Regular Mode. But the Board also decided not to award any point for M.Ed obtained by the candidates from the aforesaid University on the ground that the University did not have the approval from the National Council for Teacher Education (NCTE). The candidate, namely, Nelofar Jan, who was figuring at Serial no.01 in the Provisional Select List of OSC Category got ousted from the Provisional List because the marks/points awarded to her for her M.Ed. Degree from Singhania University were taken out. She, thus, fell short of requisite merit and, therefore, was ousted from the zone of selection. It further transpires that respondent no.5, who had made it to the Open Merit Select List because of having been awarded 02 points for the Degree obtained from Singhania University, was later on pushed out of the Merit List and was placed at Serial no.01 of the OSC Category List. This was done by subtracting two points from his overall merit, which he had obtained for his qualification of M.Phil from Singhania University. As a result, respondent no.5 replaced Nelofar Jan in the Final Select List of OSC category, followed by Wahid ud din Ahanger, who continued to be placed at Serial no.02 in

the Select List of OSC Category.

4. The short grievance of the petitioner, who figures at Serial no.01 in the Wait List of OSC Category, is that had respondent no.5 been selected in the Open Merit Category, petitioner would have made it to the Select List of OSC Category at Serial no.02. She submits that after ouster of Nelofar Jan from the Select List, Wahid ud din Ahanger was to be promoted to Serial no.01 and petitioner, being only candidate in the Wait List of OSC Category, was to be pushed up in the Select List under OSC Category. She claims that like other candidates, respondent no.5, with his M.Phil Degree from Singhania University, was entitled to 02 points and respondent-Board arbitrarily and without any justification subtracted 02 points from his overall merit and pushed him to OSC Category. By doing so, they took away valuable right of petitioner to be selected under OSC Category. This is pith and substance of the grievances projected by the petitioners in this petition.

5. Respondents have filed their Reply Affidavit and have taken the stand that 02 points awarded to respondent no.5 for his M.Phil Degree obtained from Singhania University were later on taken out and as a result, the merit of respondent no.5 fell to 57.01 and, therefore, came to be placed at Serial no.01 of the Select List under OSC Category. With regard to petitioner, respondent no.2, in his Reply Affidavit, has stated that her overall merit was 54.26, which was less than cut-off merit of OSC Category and, therefore, she was placed in the Wait List of OSC Category.

Respondent no.2, however, has not given any explanation as to why 02 points earmarked for M.Phil Degree in selection criteria were ultimately not awarded to respondent no.5, when the Board had taken a decision to award marks for the M.Phil Degree obtained from Singhania University through regular mode. It is not the case of respondent no.2 that the Degree of M.Phil obtained by respondent no.5 from Singhania University, was not through regular mode.

6. Having heard petitioner in person and Mr N.H. Shah, learned Sr. AAG and Mr Mir Suhail, learned AAG, appearing for respondent-Board, and perused the record, I am of the view that there is substance and merit in the submissions made by the petitioner.

7. I have gone through the original selection record produced by Mr Suhail, learned counsel for the respondent-Board and have found that taking out 02 points from the overall merit of respondent no.5, which he had been initially awarded for the Degree obtained from Singhania University is absolutely arbitrary and without any justification. It is true that initially some of the aggrieved candidates had raised doubts about the validity of qualification of M.Phil and M.Ed. obtained from Singhania University, Rajasthan, however, the matter was deliberated in a Board meeting and a decision was taken to consider the qualification of M.Phil obtained from Singhania University through regular mode for awarding 02 points. The Board, however, decided not to consider M.Ed.

qualification from the aforesaid University on the ground that the University had no approval from NICTE in this regard.

8. From the perusal of the record, it further comes to fore that M.Phil Degree possessed by respondent no.5 from Singhania University, was obtained through regular mode and the said candidate had submitted the requisite bona fide certificate as well. As a matter of fact, when in the Final Select List the name of respondent no.5 was taken out of OM Category and shifted to Serial no.01 of OSC Category List, respondent no.5 objected the same and filed a detailed representation. The said representation came up for consideration before the Convener, Selection Committee, who placed the matter before respondent no.2. In its 90th Board meeting, the respondent-Board considered the representation of respondent no.5 and approved award of 02 points for his M.Phil qualification obtained by him through regular mode from Singhania University. It was also decided to revised the Select Panel and put respondent no.5 at proper place in the Open Merit Category List. However, it further transpires that when the matter was placed before the Secretary of the Board for doing the needful, he opined that it would not be proper to delete anybody from the Select List after lapse of eight months of its issue. The Secretary appears to have come to the rescue of the person, i.e. respondent no.6, who had made it to the Select List because of shifting of respondent no.5 from OM Category. This is how the matter was put quietus but to the serious prejudice of petitioner. Had respondent no.2 carried the decision of the Board, taken in its 90th Board meeting and awarded/restored 02 points for M.Phil in favour of respondent no.5, he would have been selected at Serial no.26 of the Open Merit Category List and, as a sequel thereof, petitioner placed at Serial no.02 in the OSC Category.

9. A careful perusal of the record clearly indicates that the then Secretary of the Board disagreed with the opinion of the Board for obvious reasons. He appears to have manipulated the shifting of respondent no.5 from Open Merit to OSC Category, so as to pave a way for selection and appointment of respondent no.6. Otherwise, there was no reason or justification to deduct 02 points of respondent no.5, when such points had been awarded to the candidates similarly situated with respondent no.5, who too had obtained M.Phil qualification from Singhania University.

10. In view of foregoing, the petition succeeds. The selection and appointment of respondent no.6 as Teacher in District Cadre Pulwama under Open Merit Category, is held to be bad in law and accordingly, quashed. Respondent no.5 shall be deemed to have been selected at Serial no.26 of the Open Merit Category in the Final Select List of Teachers for District Cadre Pulwama, and petitioner at Serial no.02 in the OSC Category. Let respondent no.2 revise the Select List and recommend the candidature of petitioner for appointment under OSC Category within a period of four weeks from the date certified copy of this judgement is served upon respondent no.2.

Respondent no.1 on receipt of recommendation from respondent no.2 shall

forthwith issue appointment order in favour of petitioner as a Teacher in District Cadre Pulwama preferably within a period of four weeks from the date of receipt of recommendations.

Needless to say that the appointment of petitioner shall be made retrospectively - from the date the other candidates in OSC Category were selected/appointed. It is made clear here that the appointment of petitioner retrospectively shall be notional. The monetary benefit, however, shall be available to the petitioner prospectively, with effect from the issuance of appointment order.

11. It may, however, be further clarified that if respondents are in a position to accommodate the petitioner against some available vacancy, quashment of selection and appointment of respondent no.6 may not be given effect to.

12. Before parting with the judgement, I would also like to direct the Commissioner/Secretary to Government, General Administration Department, J&K, to initiate appropriate departmental action against the then Secretary of the J&K Services Selection Board, who is prima facie found to have manipulated the selection of respondent no.6 and deprived the petitioner of his due right to be selected under OSC Category.

13. Disposed of.

14. Record be returned to Mr Mir Suhail, learned AAG, appearing for respondent-Board.