

(2011) 10 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 974 of 2007, CMP No. 1965 of 2007 and CMP No. 1705 of 2007

Jameel Ahmad

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 29-10-2011

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2011) 4 JKJ 440

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Judgement

Hasnain Massodi, Judge

1. The petitioner claims to have responded to the Advertisement Notice No. 04 of 2004 dated 23.09.2004, whereby amongst the other posts

J&K Service Selection Board through its Secretary-respondent No. 3 herein, invited applications for 170 posts of Junior Engineers Electrical

Grade-II in the Open Merit category. The respondent No. 3 slept over the matter for next three years and conducted interview of the aspirants for

the advertised posts only in April 2007. The petitioner appeared in interview on 27th April 2007. The select list of candidates for the advertised

posts was published in a local daily on 05.07.2007. However, the petitioner did not find place in the select list. The respondents No. 1, acting on

the select list issued appointment order in favour of the selected candidates vide Government order No. 175-PDD of 2007 dated 10.07.2007.

2. The petitioner aggrieved of the select list dated 05.07.2007 and the Government order No. 175-PDD of 2007 dated 10.07.2007 has come up

with the present writ petition seeking quashment of select list and appointment

order.

3. The petitioner assails the mode and mechanism of the selection process on the ground that the methodology adopted and followed is in conflict

with law laid down in *Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others*, . The respondent No. 3, it is pleaded

earmarked 70 marks/points, for the academic qualification 20 points for interview and 10 points for higher education (Post Graduation). The

petitioner's case is that the respondent No. 3 having regard to fact that the aspirants for the advertised vacancies were Engineer Graduates from

different Engineering Colleges of the Country as also of some other countries, ought not to have given any weightage to the merit obtained by the

aspirants in the academic qualification i.e. Bachelor Engineering. It is pointed out that different Universities in India and outside observe different

parameters for assessing performance of their students and as there is no uniformity in the assessment of the academic merit, 70% weightage given

to the merit in academic qualification has tilted scales in favour of the aspirants who could not perform well in their interview or had not higher

qualification (Post Graduation) to their credit. The right course for the respondent No. 3, according to the petitioner was to hold a written test of all

the candidates and award marks on the basis of performance in such written test. The petitioner, to highlight how the methodology adopted by the

respondent No. 3 has worked harshly against the petitioner and similarly placed candidates, has made reference to the case of respondent No. 7

who though obtained only 10.67 points in vivo-voce like the petitioner was nonetheless selected because of higher merit (61.87) points as against

36.92 points awarded to the petitioner on the basis of his merit position in B-Tech examination. The selection list and appointment order in

question is also impugned on the ground that the interviews were conducted by one of three member of the Committee constituted by the

respondent No. 3 in terms of Subordinate Service Recruitment Rules. It is next pleaded that the only member of the Committee has awarded

points in an arbitrary manner. To illustrate reference is made to the 19 points out of 20 awarded in favour of respondent No. 9. The petitioner also

complains that he has not been awarded points for the higher qualification to his credit. The delay in completing the selection process is the other

grounds urged in support of case set up in the petition.

4. The respondent No. 3 in its Reply has defended the criteria adopted for selection of Junior Engineers, insisting that the criteria was adopted in

55th meeting of the Board held on 16th December 2006 after having due regard to the representations received from the candidates and inputs

from other sources. It is pleaded that the petitioner though participated in the interview failed to make the grade and can not be heard questioning

the criteria adopted, after the petitioner voluntarily participated in the selection process. The respondent No. 3, however, in reply to para 5 (ix) has

not controverted the averment that the interviews were not conducted by the Committee constituted in terms of Rule 9 of SRO 194 of 1992, but

only by one of the members of the Committee. The stand taken by the respondent No. 1 and 2 is that the respondent No. 3 having made the

selection process and submitted its recommendations was better placed to reply the petition.

5. I have gone through the pleadings and records available on the file and have heard Learned Counsel for the parties.

6. Article 16 of Constitution of India guarantees equality of opportunity to all citizens in the matters relating to employment or appointment to any

office under the State. The right of equality of opportunity in matters of public employment is an extension or spread of right to equality before the

law and equal protection of the laws guaranteed under Article 14 Constitution of India. It implies non-arbitrariness is an important component of

the right enshrined in Article 16. The employment under the Government being in the nature of public largess, the State is required to follow a fair,

non-arbitrary and transparent procedure in the matters relating to employment or appointment to any office under the State. The State in order to

ensure that the aforesaid matters are conducted in conformity with Constitutional mandate, entrusts the selection for making appointment to any

office under State to an independent or autonomous body, that as far as possible, is not amenable to any interference from any agency or

Department and makes the selection in a transparent, unbiased and objective manner uninfluenced by any pulls and pressures. Section 124

Constitution of Jammu and Kashmir, corresponding to Article 309 of the Constitution of India empowers the legislature to enact a law regulating

the recruitment, and conditions of the service of the persons appointed to public service and post in connection with the affairs of the State. In

terms of proviso to Section 124, the Governor or such a person as he may direct is competent to make Rules, regulating the recruitment and the

conditions of the services of the person to such service and posts until provision, in that behalf is made by or under an Act, of the legislature, in

exercise of powers u/s 124. The Rules so made are to have effect subject to the provision of any such Act.

7. The Governor in exercise of powers conferred by proviso to Section 124 has made Jammu and Kashmir Subordinate Service Recruitment

Rules, 1992 notified as SRO 194 of 1992. The Rules provide for constitution of Service Selection Board for making recruitment to subordinate

service as defined under rule 2 (v). The Rules provide for constitution of the Board, place of its sitting, procedure for selection etc. The Rules vest

the Board with a discretion to take decision as regards test or examinations to be conducted for finalising selection for the posts referred to it by

the Administrative Department concerned as laid down in Rule 12, unless mode and manner of such tests or examination is prescribed under

Rules, in which case obviously, the Rules are to be followed. It needs no emphasis the Board has to exercise its discretion in the matters relating to

tests or examinations and the weight-age given to the performance of the aspirants in the examination that make them eligible for the post, written

test or examination, if any, conducted by the Board and the vivo-voce in an objective transparent and non-arbitrary manner. The weightage given

to all the afore-stated aspects must help the Board to truly assess the merit and eligibility of the candidate.

The Board is not expected to give weight-age to the performance in academic examination that makes a candidate eligible for the posts, to the

performance in the written test or examination conducted by the Board and to performance in vivo-voce, in such manner that there is scope for

converting merit into demerit. The object is to distribute the weight-age to different aspects of the performance of a candidate as detailed above in

such a manner that the real worth of the candidate is truly reflected in the assessment of merit made by the Board. Again the extent of weight-age

given should not leave room for any arbitrariness so that by arbitrary exercise of power the merit gets sidelined. It would be apt to point out that

the petitioner having regard to his performance and that of respondent No. 7 in the vivo-voce would have been selected had the merit obtained in

B.E./B-Tech degree not been given weight-age by the respondent No. 3. To illustrate if extra weightage is given to the performance in vivo-voce

there is a chance of a candidate getting advantage because of the points awarded even if his performance in written test or examination which is

objective and verifiable, is dismal or below average. The Board similarly is not to give weight-age to performance in academic examination that

makes a candidate eligible for the post, unless all the candidates have passed such examination from one University or more than one Universities,

having comparable standards of assessing performance in such examination. To illustrate if graduation is the qualification prescribed under the

Recruitment Rules, for the appointment to an advertised post and a number of candidates having graduated from different Universities respond to

the advertisement notice, the Board is not expected to give weight-age to the performance in the graduation examination conducted by such

Universities as there is always possibility of different Universities having different parameters or standards for awarding marks or assessing

performance in such examinations. The Board can give weight-age to performance in such examination only and only, if it is satisfied that all the

Universities observe and follow the same standard/of awarding marks or assessment of performance. It however, would neither be possible for the

Board nor the practicable to make a survey of methodology adopted by all the Universities in evaluating the performance of the candidates in their

graduation examinations as the Board cannot foresee the academic background from which the candidate may respond to its advertisement notice.

8. In the present case the Board has set apart 70 points for performance of the candidates who responded to the advertisement notice No. 04 of

2004 dated 23.09.2004 in their Bachelor of Engineering/B-Tech examinations.

9. From perusal of the available record it transpires that the candidates with B.E./B-Tech etc. degree to their credit from different Universities

within and outside India responded to the advertisement notice in question. It is a fact of common knowledge that different Universities within the

country and outside the country have their own standard and norms to evaluate performance of their B.E/B-Tech degree students. In a University

outside country the students may be allowed to go for "take home examinations instead of the in class examinations", to take the question paper to

their residence, solve and answer it within 6-8 hours and return the answer sheets in evening at their respective examination centres. The

Universities within the country like National Institute of Technology may have yet to experiment with the "take home examination procedure" and

insist on in-class examinations. Similarly some Universities may earmark more marks for participation in Seminars, symposia and Workshops or

write ups and some Universities may lay extra focus on class attendance, sessionals and written examinations. The performance of the candidates

in their degree examinations as set out in their final marks sheets may not necessarily be reflective of their true merit because of different standards

observed in evaluating/assigning their performance. The merit obtained in BE/B. Tech exams by a few of the candidates who graduated from

different universities, tabulated in the writ petition indicate how all the candidates from Universities in Russia have obtained approximately 90% or

more marks in said examination and candidates from Indian universities have obtained lesser marks. There is even different pattern of awarding

marks discernable in case of candidates from different universities within the country.

10. In the circumstances it would not be safe to give any weightage, let alone 70% weightage to the performance in B.E and B-Tech examination.

The weightage given by the Board to performance in said examination, in the circumstances is not in conformity with spirit of Article 14 and 16 of

the Constitution of India and is pregnant with the mischief to convert merit into demerit and vice-versa. The petitioner has rightly pointed to the

selection of respondent No. 7 who like petitioner obtained only 10.67 points in vivo-voce but stole march over the petitioner because of her higher

merit in B.E./B-Tech examination, to insist that the weight-age given by the Board to the performance in B.E./B-Tech examination was bound to

work harshly against the candidates who were otherwise meritorious and well suited for the advertised job.

11. The Supreme Court in Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, though in a different context has

observed:-

6. So far as admissions to 50% open seats not reserved on the basis of institutional preference (hereinafter referred to as 50% non-reserved seats)

for post-graduate courses such as MD, MS and the like are concerned, we may point out that these admissions also can not be made on the basis

of marks obtained by the students at different MBBS examinations held by different universities, since there would be no comparable standards by

reference to which the relative merits of the students seeking admission to post-graduate courses can be judged. It would not only be unfair and

unjust but also contrary to the equality clause of the Constitution to grant admissions to 50% non-reserved seats in the post-graduate courses by

mechanically comparing the marks obtained by the students at the MBBS examinations held by different universities where the standard of judging

would necessarily vary from university to university and would not be uniform. If admissions were to be made on this basis, a less meritorious

student appearing in the MBBS examination held by a university where the standard of evaluation is liberal would secure a march over a more

meritorious student who appears in the MBBS examination where the standard of marking is strict. We can not therefore approve of admissions to

50% non-reserved seats for the post-graduate courses being made on the basis of marks obtained by the students at the different MBBS

examinations held by different universities. Such admissions would be clearly invalid as constituting denial of equality of opportunity.

12. From the above discussion it emerges that the Board and for that matter any Authority including Public Service Commission saddled with the

responsibility to make selection for any office or post under the State should not as general rule give any weightage to the performance of a

candidate in University or Secondary School examinations that makes him eligible for appointment to the advertised post. The merit obtained in

such examination cannot be even taken into account for short listing the candidates. The right course for the Board of the Commission as the case

may be would be to hold a uniform written test for all the aspirants for advertised post(s), who have graduated or passed from different

Universities and Secondary School Boards and evaluate their merit on the basis of their performance in such written examination. Where the

response to an advertisement notice is enormous the Board may go for a uniform screening test to short list the candidates for the written

examination. So viewed the criteria adopted by the Board in the present case offends the mandate of Article 14 and 16 of the Constitution of

India. Resultantly the select list notified on 05.07.2007 and the appointment order whereby the appointments have been made on the basis of

select list are violative of Article 14 and 16 of the Constitution, and liable to be quashed.

13. The Chairman of the Board in terms of Rule 9 of Jammu and Kashmir Subordinate Service Recruitment Rules, 1992 is empowered to

nominate a Committee of not less than two Members of the Board for conducting examination and for holding interviews and tests for purposes of

selection of the candidates for being appointed for the State cadre. In case of Divisional and District cadre such Committee is to comprise of not

less than three Members of Board. In the present case the & Chairman admittedly in exercise of powers under Rule 9 nominated S/sh. Farooq

Ahmad Peerr IAS, Mrs. Dev Lata IAS, and Khursheed Ahamad Untoo Superintending Engineers as Convenor and members of the Committee

for conducting the examination and for holding interviews and tests for selection of the candidates for advertised posts of Junior Engineers

Electrical Grade-II. The power vested in Chairman of the Board to constitute a multi member Committee for making the selection is also a step

towards ensuring objectivity and transparency in the selection process. A multi member Committee as against the Single Member Committee

would be better placed, free & safe from any bias, prejudice, ill will, malice and fear or favour to evaluate the suitability and merit of a candidate in

vivo-voce. In other words the provision for multi member Committee is not without purpose but to accomplish over all agenda of fair, honest and

objective selection for employment under the Government. In the present case the petitioner's claim that the three member Committee abdicated its

powers and role assigned under the Rules to a Single member namely Shri Khursheed Ahamad Untoo has not been expressly or even impliedly

denied by the respondent No. 3. The respondent No. 3 as already pointed out in Para 5 (ix) of the Counter Affidavit has not denied that the vivo-

voce was exclusively conducted by Shri Khursheed Ahmad Untoo Superintending Engineer Commercial Survey PDD. The selection process in the

circumstances has not been conducted in accordance with Jammu and Kashmir Subordinate Service Recruitment Rules, 1992. The selection

process and its outcome thus are liable to be set aside.

14. Viewed thus, the selection process, select list and the consequent appointment order are tainted with arbitrariness, offend Rules as also Article

14 and 16 of the Constitution and are liable to be quashed. However, the question arises whether the selection of as many as 170 Junior Engineers

made few years back, who must have now gone up the ladder, is to be set aside after such a long interval. The Court is required to explore

whether the petitioner's grievance can be addressed without disturbing the selection/appointment of private respondents. It is pertinent to point out

that the petitioner as well as private respondents were admittedly eligible for the advertised posts. The dispute, if any, is regarding selection process

and methodology adopted by Board to make the selection. It is not a case where the petitioner questions very eligibility of the private respondents

to be considered for the advertised posts. I am of the opinion that against said backdrop the proper course in conformity with imperatives of

justice and fair play, would be to direct the respondents to appoint the petitioner as Junior Engineer against one of the available vacancies, without

disturbing the selection of private respondents. (Such recourse would in conformity with the law laid down in Ashok alias Somanna Gowda and

Another Vs. State of Karnataka by its Chief Secretary and Others, . It needs to be pointed out that vide order dated 21st. September 2007 the

Court on being informed that seven posts from Open Merit category were available because of non-joining of the selected candidates, directed the

respondents to keep one post reserved out of available posts in the Open Merit category. In the circumstances no difficulty is to be confronted by

the respondents in complying with the judgement and appointing the petitioner against the aforesaid posts.

15. For the reasons discussed above the writ petition is disposed of, with direction to the respondents to appoint the petitioner as Junior Engineer

Electrical-II in the grade of 4500-7000 (pre-revised). The respondents shall issue the appointment order in favour of the petitioner within seven

days from the date copy of this judgement is served on the respondents.