
(2005) 03 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1026 of 2004

Javed Ahmad Langoo

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 30-03-2005

Acts Referred:

Citation : (2005) 3 JKJ 370

Hon'ble Judges : R.C. Gandhi, J

Bench : Single Bench

Advocate : Z.A. Qureshi, for the Appellant; Azhar-ul-Amin, for the Respondent

Final Decision : Allowed

Judgement

R.C. Gandhi, J.—Petitioner by means of this petition seeks direction to the respondent No. 2, Public Service Commission, to declare the

petitioner eligible for conducting his interview having secured 1086 marks, above the cut off marks. He also seeks direction for revaluation of his

General English paper.

2. Respondent No. 2, Public Service Commission, issued Notification No. PSC/Examination-02/09 dated 20.02.2002 inviting applications from

the permanent residents of Jammu & Kashmir desirous to compete for Jammu & Kashmir Civil Service Competitive Examination, for direct

recruitment to the posts in the pay scale of 7500-12000, in various services. Petitioner applied for seeking selection. He was assigned Roll No.

204224 by respondent No. 2. He appeared in Preliminary Examination and passed the same. He appeared in the main examination. The

respondent No. 2 issued the select list and the name of the petitioner was not included therein. Another select list was issued, wherein also name of

the petitioner was not included. Respondent No. 2 published the merit list of the candidates in daily Kashmir Images on 14.06.2004. The petitioner

according to the merit list appeared at S.No. 64. The cut off point for inviting the candidates for interview fixed by the Public Service Commission

was 988. The petitioner approached the Commission to know as to why he was not called for interview though he has secured 1086 marks. His

request was not heeded to and considered. In such circumstances, this petition has been filed.

3. Respondents have filed the reply stating therein mainly that the Appendix IB attached to SRO 161 of 1995 envisages that a candidate has to

qualify all the papers and if he fails in any of the papers which is required to be passed, the candidate is not eligible to be summoned for interview.

It is also stated that the petitioner appeared in General English paper I but has not qualified it, therefore, he incurred disability for being called for

the interview. He was required to pass this paper compulsorily.

4. Heard learned Counsel for the parties and perused the record. Learned Counsel for the petitioner reiterating the grounds set out in the writ

petition has submitted that petitioner being meritorious having secured 1086 marks was required to be summoned for interview and the stand taken

by respondents that the petitioner has not qualified the Paper General English-I, is not tenable as this paper was only of qualifying nature and not

compulsorily to be passed. In rebuttal, learned Counsel for the respondents has submitted that petitioner was required to qualify all the papers and

unless he qualifies all the papers he was not entitled to be called for interview.

5. To appreciate the pleas of learned Counsel for the parties, relevant portion of Appendix IB is extracted below; -

B. Main Examination

The written examination shall consist of the following papers:

Paper I General English 300 marks

Paper II Essay in English 150 marks

Paper III and IV General studies 300 marks

Papers V, VI, VII & VIII. Any two subjects to be selected from the list of the optional subjects indicated below:

(1) Paper I on English will be of matriculation standard and will of qualifying

nature only. The marks obtained in this paper shall not count for ranking.

6. Relying upon this provision contained in the Appendix, learned Counsel for the respondents has submitted that the language contained therein is itself explanatory indicating that General English paper I will be Matriculation standard and of qualifying nature only, which means that every candidate has to pass it compulsorily.

7. Mr. Qureshi, in rebuttal, relying upon the proviso to the Rule 8 (iv) of SRO 161 of 1995 has submitted that if a candidate fails in one paper, he does not incur disability to summon him for interview by the respondent No. 2. Proviso is extracted below:

Provided that a candidate who fails to secure such minimum number of marks, as are fixed by the Commission in their discretion in more than one subject, shall not be eligible to be called for interview.

8. From the language contained in the proviso, it is clear mandate of law that if a candidate fails to secure such minimum number of marks in more than one subject as fixed by the Commission in its discretion, in that event, he shall not be eligible to be called for interview. The discretion is to be exercised in a situation where the candidate, in more than one subject, has not secured the minimum number of marks. More than one does not

mean one. It is not brought on record that respondent No. 2 has exercised such discretion expressly. Otherwise also the language contained in the

Note to Rule 8, suggests that the General English paper is not required to be compulsorily passed. If it would have been so, the marks secured in

the paper should have been counted for the ranking also. Ranking is to be considered by taking the marks secured in all papers and not by

excluding the marks of the papers in which a candidate has failed. The Note contained to the Appendix reveals that marks obtained in the General

English paper are not to be counted for ranking and is of qualifying nature which suggests that if a candidate does not qualify, he does not incur

disability for interview. If this paper has that much significance that if not qualified that candidate shall be ineligible for interview, it does not appeal

as to why, in that event, its marks are excluded to determine ranking. Looking it in this perspective, it appears to be harmonious interpretation that

non-qualifying of this paper should not come in the way of the candidate to call

him for interview as is also evident from the Proviso to Rule 8 as the petitioner has not failed in more than one subject.

9. For the aforesaid reasons, the writ petition is allowed. Respondents are directed to interview the petitioner.