

(2011) 04 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1580 of 2008 and CMP No. 2865 of 2008

John Mohd. Bhat and Another

APPELLANT

Vs

SKIMS and Others

RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Citation : (2011) 2 JKJ 602

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hasnain Massodi, J.—The Petitioners responded to advertisement notice No. (01) SKIMS-MC of 2007 dated 31st May 2007 whereby

applications were invited by Respondent No. 1 amongst others for the post of Estates/Transport Officer. The advertisement notice laid down the

following eligibility criteria for the advertised post:

B.B.A. with one year experience or diploma in Civil/Mechanical Engineering with three years' experience in Estates/Transport Department.

2. The Petitioners found place in the list of as many as 31 eligible candidates at serial numbers 4 and 6. Shri Suhail Ahmad Reshi-Respondent No.

4 herein also applied for the aforesaid post and figured at serial No. 19 in the list of eligible candidates. The Petitioners and Respondent No. 4

participated in the selection process. However, Respondent No. 2 on the recommendations of the Selection Committee/Respondent No. 3, vide

order No. SKIMS-MC 274 of 2008 dated 4th October 2008 appointed Respondent No. 4 as Estates/Transport Officer.

3. The Petitioners, aggrieved at the appointment of Respondent No. 4 as Estates/Transport Officer, seek quashment of appointment order No.

SKIMS MC 274 of 2008 dated 4-10-2008 as also direction to Respondents 2 and 3 to appoint the Petitioners against the advertised post on the

ground that Respondent No. 4 did not fulfill the eligibility criteria i.e. qualification and experience prescribed for the post, detailed in the

advertisement notice and that the Petitioners apart from being fully eligible for the post have better merit as against Respondent No. 4 and thus right

to be considered for appointment against the post.

4. The Petitioners' case is that Respondent No. 4 though having B. Tech in Mechanical Engineering obtained in June 2006 to his credit, does not

have the experience required for the post. It is pleaded that Respondent No. 4 was on the rolls of National Institute of Technology, Hazratbal,

Srinagar, (NIT), as a regular student and thus has not "three years experience in Estates/Transport Department" as on 31.5.2007. The appointment

of Respondent No. 4, it is insisted, is a case of sheer favouritism inasmuch as Respondent No. 4, who was not even eligible to apply for the

advertised post, was not only permitted to participate in the selection process but appointed against the post in disregard of the eligibility criteria,

laid down in the advertisement notice. The Petitioner No. 1 claims to have passed 3-year Mechanical Engineering course with 63.26 per cent

marks, worked with J & K State Cable Car Corporation and thus having three years experience in the relevant field. Petitioner No. 2 on his part

claims to have undergone 3-years diploma in Mechanical Engineering with 66.84 per cent marks and also to have six years experience as works

instructor and two years in Jhelum Spares as Maintenance Engineer. The Petitioners on the strength of their academic record and the work

experience lay claim to the advertised posts.

5. The official Respondents (Respondents 1 to 3) oppose the writ petition on the ground that Respondent No. 4 has superior qualification i.e., B.

Tech and M. Tech in Mechanical Engineering as against the qualification of Petitioners, who have only Diploma in Mechanical Engineering to their

credit. It is insisted that the Respondent No. 4 has also two years part time experience as transport executive and that the Respondent No. 4 was

rightly selected and recommended for appointment by the Selection Committee

for the advertised post.

6. The Respondent No. 4, in his reply, has taken the stand that he has a rich academic record to his credit and has obtained B. Tech and M. Tech

in Mechanical Engineering from National Institute of Technology, Hazratbal, and thus has a superior right as against Petitioners to be selected for

the advertised post. It is pleaded that Respondent No. 4, having been found by the Selection Committee comprising of experts, as best amongst

the eligible candidates, was recommended for appointment against the advertised post and the decision of Selection Committee cannot be

interfered with on any ground whatsoever. It is pleaded that as the Petitioners have failed to make the grade after participating in the selection

process the Petitioners are stripped off questioning the selection of Respondent No. 4. The Selection Committee is said to have relied on the

experience certificate appended by Respondent No. 4 with application, after proper scrutiny and that the experience certificate was thus no more

open to question. It is insisted that the Petitioners, having been accorded consideration by the Selection Committee, cannot complain of violation of

their fundamental or Constitutional rights.

7. The Petitioner No. 1, in his rejoinder to counter affidavit, has reiterated his stand that Respondent No. 1, not fulfilling the eligibility criteria, was

not competent to participate in the selection process. It is pleaded that in absence of a specific condition in the eligibility criteria that the candidates

having higher qualification would be eligible even in absence of prescribed experience, the Selection Committee could not consider muchless select

Respondent No. 4 for the advertised post. It is pointed out that on the cut-off date fixed in the advertisement notice dated 31.05.2007, for

submitting applications for the advertised post, the Respondent No. 4 had only a B. Tech Degree to his credit and M. Tech Degree was obtained

by Respondent No. 4 after the applications were received and selection process commenced. It is reiterated that Respondent No. 4 was on rolls

of National Institute of Technology Hazratbal from 2002 till 2006 as B. Tech regular student and thereafter from 2006 to 2008 as M. Tech regular

student and thus not possessed of requisite experience - a necessary condition, laid down in the advertisement notice. It is pleaded that Petitioners,

fulfill the eligibility criteria, found place in the selection list but were deliberately

and intentionally ignored because of extraneous considerations. It is insisted that selection of Respondent No. 4 is unconstitutional and violative of fundamental rights of the Petitioners.

8. I have gone through the pleadings and record available on the file. I have heard learned Counsel for parties.

9. The nature of controversy raised in the writ petition makes it necessary to revisit the eligibility criteria for the post of Estates/Transport Officer

detailed in the advertisement notice No. (01) SKIMS-MC of 2007 dated 31.05.2007. The criteria may be tabulated as under:

S. No. Name of Scale of Total Prescribed

the Post Pay No. of Qualification/Experience

posts

wise

breakup

3. Estates/ 5700- 01 B.B.A with one year

Officer 10100 (OM) experience or Diploma

in Civil/Mechanical

Engineering with 03

years experience, in

Estates/Transport

Department.

10. A bare look on the eligibility criteria set out in the advertisement notice would reveal that two academic backgrounds the identified for

recruitment to the post of Estates/Transport Officer. A candidate having Bachelors Degree in Business Administration as also candidate having

Diploma in Civil/Mechanical Engineering, could apply for the post. However, in case of a candidate having Bachelors Degree in Business

Administration (BBA) it was further necessary for him to have one years experience in Estates/Transport Department so as to be eligible to

compete for the post. In case of a candidate with Diploma in Civil/Mechanical Engineering 03 years experience in Estates/Transport Department

was required to make such a candidate eligible for the post. The Respondent No. 4, as is evident from the pleadings and record available on the

file, was on rolls of National Institute of Technology, Hazratbal as a regular student from the year 2002 to 2008. On the date advertisement notice was issued i.e., 31st May 2007, Respondent No. 4 had done his B. Tech in Mechanical Engineering and was undergoing M. Tech course as a regular student. The Respondent No. 4 thus on the relevant date had only B. Tech Degree in Mechanical Engineering to his credit. The Respondent No. 4 obviously did not possess 03 years experience in Estates/Transport Department on the date he applied for the post of Estates/Transport Officer. The Respondent No. 4, in the circumstances, did not fulfill the eligibility criteria laid down in the advertisement notice in question for the post. The Respondent No. 4, conscious that it would sound scandalous to claim 03 years experience in Estates/Transport Department, in face of his having been on rolls of National Institute of Technology, Hazratbal, as a regular student from 2002 to the date of submitting application, claimed to have worked on part time basis with M/s Khan Alsaba Automobiles, and placed a certificate issued by the proprietor of the business concern in this regard in support of his counter affidavit. The certificate even if it is assumed was appended to the application filed by Respondent No. 4 in response to advertisement notice in question, does not in any manner change the complexion of the case or make him eligible for the advertised post. The reason being that the eligibility criteria notified did not allow room for experience on part time basis. Furthermore the certificate even if taken on its face value indicates part time work from March 2005 to March 2007 i.e., two years as a Design/Project Engineer. It does not thus show that Respondent No. 4 had three years experience in Estates/Transport Department.

11. It is vehemently argued by learned Counsel for Respondent No. 4 that as the Respondent No. 4 was having higher qualification as against other candidates, who had applied for the post, the Selection Committee was competent to ignore the requirement of experience in case of Respondent No. 4. It is insisted that requirement of experience for a candidate having Diploma in Mechanical/Civil Engineering was only to supplement whatever expertise and skill he had acquired while undergoing Diploma Course and that a candidate having B. Tech in Mechanical Engineering to his credit, was expected to have far advanced skill, training and expertise as compared with a candidate having Diploma in

Mechanical/Civil Engineering and thus the requirement of 03 years experience in case of Respondent No. 4 was rightly not insisted upon by

Selection Committee. The argument advanced is bereft of any merit and if accepted would amount to giving the Selection Committee power to

alter, modify and change the eligibility criteria, which undoubtedly is beyond its competence. It would be dangerous to hold that a Selection

Committee can change, modify or alter the eligibility criteria midstream when the selection process is on and that also selectively without making it

public that eligibility criteria was proposed to be changed, modified or altered. It is for an employer to lay down criteria for a particular post

objectively and having due regard to the requirements of the duty, the person proposed to be employed, is to perform. If in the present case,

Respondent No. 1 decided to insist on one year's experience in case of a candidate having Bachelors Degree in Business Administration and 03

years experience for a candidate having Diploma in Civil/Mechanical Engineering, the Selection Committee, assigned the job to make selection

from amongst the eligible candidates i.e., candidate fulfilling such criteria, cannot assume the role and powers, only available to Respondent No. 1

and rewrite eligibility criteria. Needless to emphasize that even the Government/ employer cannot change eligibility criteria in the in the middle of

selection process, as such an exercise would amount to depriving the candidates, who may become eligible because of change in eligibility criteria

from participating in the selection process. Such a course, for the aforesaid reasons, would be ill-advised, keep the eligible candidates at bay,

offend ""equal opportunity"" clause and thus would be in conflict with rule of law. The higher qualification, if any, possessed by an aspirant for the

job, would not by itself make him/her eligible or brighten up his/her chances in absence of the experience for the advertised post. So viewed the

selection and appointment of Respondent No. 4 for the post of Estates/Transport Officer, is liable to be set-aside.

12. The Petitioner - John Mohammad Bhat, though joined by Petitioner No. 2 Fayaz Ahmad Hurrah, at the time of throwing challenge to the

selection and appointment of Respondent No. 4, has been left alone by his co-Petitioner, to prosecute the petition. The petition qua Petitioner No.

2 stands dismissed for want of prosecution. The Petitioner No. 1 finds place at S. No. 04 in the List of eligible candidates and claims to have

worked as Mechanical Engineer for 03 years with J & K State Cable Car Corporation - a J & K Government Undertaking. The Petitioner No. 1

is the only candidate from amongst the eligible candidates, who have participated in the selection process, to call in question the selection and

appointment of Respondent No. 4. Against the said backdrop, in wake of quashment of selection and appointment of Respondent No. 4, a

direction is to be issued to Respondents to consider appointment of Petitioner No. 1 against the post of Estates/Transport Officer in accordance

with rules.

13. For the reasons discussed above, the writ petition is allowed and by a writ of certiorari, selection and appointment of Respondent No. 4 for

the post of Estates/Transport Officer ordered vide Order No. SKIMS-MC 274 of 2008 dated 04.10.2008, is quashed. Respondents 2 and 3, by

a writ of mandamus, are commanded to consider appointment of Petitioner No. 1 - John Mohammad Bhat against the post of Estates/Transport

Officer, advertised vide advertisement notice No. (01) SKIMS-MC of 2007 dated 31.05.2007.

Disposed of with connected CMP(s).