
(2019) 03 J&K CK 0057

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 434 Of 2019, IA 01 Of 2019

M. Mohsin Sikander

APPELLANT

Vs

State Of Jammu & Kashmir & Ors

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Jammu And Kashmir Civil Services Decentralization And Recruitment Act, 2010 —
Section 6, 6(ii), 13, 13(i), 15
Constitution Of Jammu And Kashmir, 1956 — Section 124
Civil Services Decentralization And Recruitment Rules, 2010 — Rule 13, 13(4)
Constitution Of India, 1950 — Article 14, 16, 21

Citation : (2019) 03 J&K CK 0057

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Shafqat Nazir, Mir Suhail

Final Decision : Dismissed

Judgement

1. The petitioner has filed this petition with the prayer to quash the select list of candidates under Scheduled Tribe (ST) category for the post of General Teacher, District Cadre, Srinagar, issued by the Services Selection Board, pursuant to advertisement notice no.06/2017/01 to 06/2017/14 dated 28.12.2017, and to direct the respondents to select and appoint him on the post under the said category on the basis of his eligibility and merit position.

2. The Jammu and Kashmir Services Selection Board (for short, the Selection Board) issued advertisement notice no.06/2017/01 to 06/2017/14 dated 28.12.2017 inviting online applications for participating in the selection process for the District Cadre Posts of General Teacher from eligible candidates, who are permanent residents of J&K States etc. In the District Srinagar, among others, 33 posts under ST category were so advertised. The advertisement notice in its Clause 1(i)(a) stated as under:

"(a) It is further amplified that in respect of District Cadre posts only those

candidates who are residents of the concerned District as defined under the relevant Act/Rules can apply. However, candidates belonging to SC category are eligible to apply for the said reserved vacancies irrespective of the district of residence in the concerned District.

(b) ?A person shall be deemed to be resident of a particular District if he / she has resided in such District as the case may be for a period of not less than 15 years before the date of applying for a particular post and is actually residing in the said area?.

(c) If a woman marries outside her District the period of residence of 15 years shall not operate as bar for applying to a post provided that her husband is a resident of that District, as the case may be, for a period of not less than 15 years."The last date for submission of the application forms was to be 21.01.2018.

3. The case of the petitioner is that he, being a State subject of Jammu and Kashmir State and a permanent resident of District Srinagar, belonging to Dard-Shine Tribe, which is specified as Scheduled Tribe, applied for the post as an ST category candidate in District Srinagar. After conducting OMR based written test of the candidates, the Selection Board vide notice issued under endorsement no.SSB/Secy/Sel/2018/9151-55 dated 04.08.2018 published provisional shortlist of the candidates requiring them to appear before the Counselling-cum-Document Verification Committee with the documents mentioned in para 5 of the Notice, namely:

Copy of Online Application form;

D.O.B. Certificate;

Reservation category certificate, if applicable;

Permanent Resident Certificate;

Discharge certificate in case of Ex-serviceman category; Other documents as per the advertisement;

4. In response to the above notice, the petitioner claims to have appeared before the said Committee and submitted the following certificates with regard to his eligibility:

i) State Subject Certificate;

ii) ST Category Certificate;

iii) Permanent Resident Certificate dated 06.03.2018 issued by the concerned Tehsildar;

iv) Certificate dated 20.09.2018 issued by Tehsildar Headquarter with Deputy Commissioner Srinagar;

- v) Migration Certificate dated 06.01.2018 issued by Tehsildar Gurez in favour of the father of the petitioner;
- vi) Photo voter slip issued by Election Commission of India in favour of the petitioner;
- vii) Copy of ration card showing residence of father of the petitioner with house number;
- viii) The revenue documents of the land on which father of the petitioner has constructed a residential house in the year 1991 along with Khaka Dasti thereof;
- ix) Certificate issued by Tehsildar Headquarter with Deputy Commissioner, Srinagar, dated 18.02.2019 certifying that the petitioner is residing in Mehjoor Nagar since 1989.

It is averred, the Selection Board, however, ignored the claim of the petitioner, and issued the select list wherein the name of the petitioner did not figure. It is averred in the petition that the last candidate selected under the ST category in District Srinagar is shown to have obtained just 10.0983 points; whereas, according to the petitioner, he has obtained 36.3021 points. It is thus stated that the petitioner was more meritorious than the last selected candidate and, therefore, on the basis of his merit, he had a prior right to be selected under the ST category. It is averred by the petitioner that, in fact, respondents 8 to 11 are far behind him in merit.

5. It is the further case of the petitioner that his father was appointed as an Assistant Works Manager in J&K SRTC in the year 1989, and ever since he has been residing at Mehjoor Nagar, Srinagar; he has obtained his education in District Srinagar itself; he is registered as a voter in District Srinagar; and that his father holds a ration card showing his residence as Mehjoor Nagar. Further, placing reliance on the certificates issued by Tehsildars of Gurez, Chanapora/ Natipora etc., the petitioner states that his residence in District Srinagar for the last more than 15 years is not disputed by any of the authorities. Claiming to have been condemned unheard, the petitioner has filed the present writ petition for the reliefs mentioned hereinabove.

6. When this petition first came up for consideration on 06.03.2019, the Court ordered issue of notice, in the first instance, only to the Selection Board and, in fact, Mr. Mir Suhail, AAG, waived notice on its behalf. He has filed reply on behalf of the Selection Board wherein the claim of the petitioner of being a permanent resident of District Srinagar is vehemently contested. Referring to Section 6 of the Jammu and Kashmir Civil Services Decentralization and Recruitment Act, 2010, it is averred that a person is eligible to appointment to a District Cadre post only if he is a permanent resident of the State; is a resident of the concerned district and possesses the prescribed qualification, eligibility and experience for the post as specified under the rules/orders regulating recruitment to such posts. Further, referring to Section 13 of the aforesaid Act, it is stated

that a person is deemed to be a resident of a particular District or Division if he/she has resided in such District or Division, as the case may be, for a period of not less than 15 years before the date of applying for a particular post and is actually residing in the said area. It is stated that the Counselling-cum-Document Committee found the petitioner not to be eligible for the post of Teacher in District Cadre, Srinagar, for, he failed to produce the residence certificate as envisaged by Section 13 of the Act. It is averred that merit position of the petitioner is immaterial, since the petitioner cannot seek consideration for the post notified under the ST category in District Srinagar, as he has been declared not eligible for the post. It is further stated that the impugned selection is wholly legal and is in accordance with law, and that it does not suffer from any legal infirmity, It is also stated that the respondent-Board has not, in any manner, violated any of the rights of the petitioner, muchless his rights under Articles 14, 16 or 21 of the Constitution.

7. I heard learned counsel for the parties and considered the matter.

8. The short point to be determined is whether the petitioner has been able to establish his residence in District Srinagar in accordance with the mandate of Section 13 of the Jammu and Kashmir Civil Services Decentralization and Recruitment Act, 2010 (hereinafter referred to as the Act). It be seen that the Act has been enacted to provide for equitable opportunities of employment in the Civil Services in the State keeping in view the complex socio-economical and geographical / topographical / linguistic / security concerns and matters connected therewith and incidental thereto. Section 6 thereof deals with appointment to District Cadre posts. It reads as under:

"6. Appointment to District Cadre Posts.

A person shall be eligible to the appointment to a District Cadre post only if he. -

(i) is a permanent resident of the State;

(ii) is a resident of the concerned district; and

(iii) possesses the prescribed qualification, eligibility and experience for the post as specified under the rules/orders regulating recruitment to such posts."

The term 'resident of the concerned district' used in Section 6(ii), quoted above, is dealt with and expounded in Section 13 of the Act which, insofar as relevant, is extracted below:

"13. Residence

(1) A person shall be deemed to be resident of a particular District or Division if he/she has resided in such District or Division, as the case may be, for a period of not less than 15 years before the date of applying for a particular post and is actually residing in the said area."

The Act or the Rules, namely, Civil Services Decentralization and Recruitment

Rules, 2010, framed by the Government under Section 124 of the Constitution of J&K and Section 15 of the Act, does not lay down any procedure to be resorted to or followed by a candidate to obtain such a certificate, or prescribes any authority empowered to issue the certificates in question. However, Sub-Rule (4) of Rule 13 of the Rules, which provide the Procedure for inviting applications by the Board and eligibility for applying to different cadres, says that for purposes of the said rule, the permanent resident certificate shall be the conclusive proof of residence of a candidate in a particular District or the Division. Rule 13 of the rules, insofar as relevant, is extracted below:

"13. Procedure for inviting applications by the Board and eligibility for applying to different cadres

(1)...

(2)...

(3) The district offices of the Board shall advertise the District cadre vacancies of the concerned district referred to it by the requisitioning authority and invite applications for selection to the said posts from such permanent residents of the State who are residents of that District and possess the prescribed qualification, eligibility and experience for such posts.

(4) For purposes of this rule, the permanent resident certificate shall be the conclusive proof of residence of a candidate in a particular District or the Division."

9. A conjoint reading of the aforesaid provisions makes it axiomatic that a person has to establish before the Board that he has resided in such District or Division, as the case may be, for a period of not less than 15 years before the date of applying for a particular post and is actually residing in the said district. Such a fact can conclusively be established by the permanent resident certificate, popularly known as State Subject Certificate. Cases are, however, conceivable that after obtaining the permanent resident certificate from his native district, a person may migrate to another district on account of occupation of his/her parents or in connection with his education, vocation, livelihood, whatever, and reside there. If he happens to seek appointment in such migrated district, the permanent resident certificate obtained by him in his native district would be inconsequential and even may be used against him. However, he has options available to him. The first option is to surrender such permanent resident certificate and obtain a fresh certificate from the competent authority of the district where he has migrated and is residing in, though this is not mandated by law. The second and the alternative option is the one provided in Section 13 of the Act, but, unfortunately, there is a flaw in the law, in that there is no procedure provided under the Act or the Rules framed there under to be resorted to or followed by such person to obtain a certificate in that behalf in order to produce the same before the Selection Board to establish his claim of residence, nor is there any authority prescribed in the Act or the Rules empowered to issue

such a certificate. That being the position, such a person is left without any forum. Consequently, the Selection Board cannot expect such a person to produce any specific certificate to establish his residence in a District commensurate with the provision of Section 13(1) of the Act. Inferentially, however, the law has left such a person free to establish his claim of residence in a district in tune with the conditionalities of Section 13(1) of the Act by whatever document he may choose.

10. In the instant case, the petitioner claims to have produced before the Counselling-cum-Documents Verification Committee of the Selection Board certain documents mentioned in para 4 hereinabove. Unfortunately, none of these documents satisfies the condition of residence of the petitioner in accordance with Section 13(1) of the Act. On the contrary, whereas the petitioner claims that he was born in Srinagar, his date of birth being 08.02.1995, and ever since has been living in Srinagar, the Permanent Resident Certificate issued in his favour by Deputy Commissioner, Baramulla, in 1998 indicates his residence as village Shahpora Payeen, Tehsil Gurez, District Baramulla. The ST category certificate issued by Tehsildar, Assistant Collector, Ist Class, Gurez, on 02.12.1998 also shows his residence as Shahpora Payeen (Achoora), Tehsil Gurez, District Baramulla. The certificate dated 06.03.2018 issued by Tehsildar Chanapora/Natipora only certifies that the petitioner along with his parents has changed residence / migrated from Shahpora Payeen, Tehsil Gurez to Mehjoor Nagar, Tehsil Chanapora/Natipora District Srinagar and that, therefore the State Subject and ST certificates obtained by him are valid. So this certificate cannot be said to satisfy the conditions of Section 13(1) of the Act. Certificate dated 08.01.2018 issued by Tehsildar Gurez also certifies only the migration of the petitioner. When such migration has taken place is not disclosed in any of the certificates. The certificate dated 18.02.2019 issued by Tehsildar Headquarter with Deputy Commissioner, Srinagar, certifies about the residence of the petitioner's father at Mehjoor Nagar, Srinagar, since 1989; it does not speak anything about the petitioner. In any case, petitioner cannot substantiate anything from this certificate in view of the fact that in the Category certificate issued by Tehsildar, Assistant Collector, Gurez, he is shown to be a resident of Shahpora Payeen, Gurez on 02.12.1998. The photocopies of the revenue records and the ration card pertain to the petitioner's father; therefore, are inconsequential. Then the petitioner has placed on record a photocopy of a photo voter slip issued by Election Commission of India in favour of the petitioner for the By-Election to PC 2-Srinagar for which the Poll date fixed was 09.04.2017. This document does not, in any manner, suggest that the petitioner had been residing in District Srinagar for 15 years or more as on the date he applied for the post. The Secondary School Examination Certificate or, for that matter, the Degree of Bachelor of Commerce do not alter the case. Even cumulatively as well, the documents placed on record do not establish such factum of residence of the petitioner in District Srinagar.

11. For all what is discussed above, there is nothing on record to even remotely

suggest that as on the date of applying for the post, the petitioner had resided in District Srinagar for a period not less than 15 years. Therefore, there is nothing before the Court to call for an interference with the select list issued by the Selection Board or its decision to declare the petitioner ineligible for the post.

12. This petition, therefore, merits dismissal and is, accordingly, dismissed in limine together with the connected IA, vacating the interim direction dated 06.03.2019.

13. However, there shall be no order as to costs.