

(2005) 05 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1596 of 2004

Mahmooda Nazki

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 20-05-2005

Acts Referred:

Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956 — Rule 18

Jammu and Kashmir Education (Gazetted) College Service Recruitment Rules, 2004 — Rule 2, 5

Citation : (2005) 05 J&K CK 0012

Hon'ble Judges : Hakim Imtiyaz Hussain, J

Bench : Single Bench

Advocate : R.A. Jan, for the Appellant; Jehangir Iqbal, Azar-ul-Amin, G.A. Lone, for the Respondent

Judgement

Hakim Imtiyaz Hussain, J.—The controversy in the present petition relates to the eligibility of respondent No. 4 to occupy the post of

Principal, Government College of Education, Srinagar. On 30th June 2004, the post fell vacant due to the retirement of Prof. Farhat Tasleem, who

was working as Principal of the said College till that date. The petitioner, who is holding the post of selection grade Lecturer in the U.G.C pay

scale of Rs. 3700-5700, was authorized to look after the College affairs as well as to function as Drawing and Disbursing Officer for the College,

till the time a regular Principal is posted in the College. Later by means of the Government order No. 247-HE of 2004 dated 30.11.2004 one

Zeeriat Ara-respondent No. 4, who was working as Principal Government College for Women, Baramulla, was transferred and posted as

Principal of the College. The petitioner has challenged the transfer and posting of

respondent No. 4, as the Principal Government College of

Education, Srinagar, on the ground that she does not possess the requisite qualifications for the said post. She has by means of the present writ

petition prayed for quashment of the said Government order, The petitioner prays for the following relief:

i. Writ in the nature of certiorari or any other appropriate writ quashment impugned appointment by transfer of respondent No. 4 as Principal,

Government College of Education, Srinagar effected vide Government Order No. 247-HE of dated 30th of November 2004, be issued in favour

of the petitioner and against the respondents;

ii. Writ in the nature of mandamus or any other appropriate writ commanding the respondents 1 & 3 to fill up the post of Principal, Government

College of Education, Srinagar from amongst the eligible candidates in accord with the mandate of Rule 5 read with Schedule-II appended to the

Jammu and Kashmir Education (Gazetted) College Service Recruitment Rules, 2004, be also issued in favour of the petitioner and against the

respondents;

iii. Writ in the nature of mandamus or any other appropriate writ to command the respondents in particular respondent 1 & 3 to consider, in the

light of the credentials in the form of letter of appreciation from the Head of the National Assessment and Accreditation Council, the case of the

petitioner for selection and consequent appointment to the post of Principal, Government College of Education, Srinagar, and on such

consideration to appoint the petitioner on the post of Principal, Government College of Education, Srinagar and to admit the petitioner to all the

consequential Service benefits by reason/by virtue of appointment on regular and substantive basis as Principal, Government College of Education,

Srinagar, be also issued in favour of the petitioner and against the respondents...

2. The official respondents as well as respondent No. 4 have filed their reply. The State has taken the stand that the petitioner has got no locus to

challenge the posting of respondent No. 4 as Principal of the said College. It is the case of the official respondents that respondent No. 4 has been

duly appointed as Principal in the year 2004 by virtue of Government Order No. 04-HE of 2004 dated 6.1.2004 and has been posted as Principal

Government College of Education, Srinagar, after having been transferred from

Baramulla. Compared to this fact the petitioner, according to the respondents, is only a selection grade Lecturer who could not make it to the post of Principal when her case was considered by the Public Service

Commission alongwith all other eligible candidates including respondent No. 4.

3. Respondent No. 4 has in her reply stated that she has got a Master's Degree in Commerce and Degree of Doctor of Philosophy in Commerce

to her credit. She also possesses Master's Degree of Arts in the subject of Economics. She has published various papers so far and has attended

the refresher courses/workshops and participated in various national seminars. She has further stated that she is qualified to hold the post of

Principal in the College of Education at Srinagar and that she has been posted as such in the interest of administration with full knowledge of rules

and qualifications.

4. Heard. I have considered the matter. Appointment to the post of Principal, College of Education, Srinagar, is governed by the Jammu and

Kashmir Education (Gazetted) College Service Recruitment Rules, 2004. Rule-5 of the Rules gives the qualification and method of appointment

and provides as under: -

(1) No person shall be eligible for appointment or promotion to any post in any class, category or grade in the service unless he possesses the

qualifications as laid down in the Schedule-II and fulfills other requirements of recruitment as provided in the rules and orders for the time being in-

force.

(2) Appointment to the service shall be made on the recommendations of the Public Service Commission;

(a) by direct recruitment;

(b) by selection; and

(c) partly by direct recruitment and partly by selection in the ratio and in the manner mentioned against each post in Schedule II appended to these

rules.

5. Schedule II, reference of which has been made in Rule 2 provides the minimum qualification required for the post of Principal, Reader and

Selection Grade Lecturer. The schedule provides that for the post of Principal, the requisite qualification is Master's Degree in any subject. It

further provides that for the post of Principal of College of Education, the minimum qualification shall be M.Ed or its equivalent Degree.

6. Thus, under the schedule while as the minimum qualification required for the post of Principal for other Colleges is Masters Degree in any

subject, the qualification for the post of Principal in the College of Education is M.Ed or its equivalent Degree.

7. Admittedly, respondent No. 4 does not possess M.Ed, or its equivalent Degree. She is no doubt possessing the qualification of Degree of

Doctor of Philosophy in Commerce, Masters Degree in Commerce as also Master's Degree of Arts in the Subject of Economics but no rule, order

or instructions have been produced to show that these Degrees are equivalent to the M.Ed qualification. Rule 18 of J&K Civil Services (C.C.& A)

Rules, 1956 provides:

Special qualification. No person shall be eligible for appointment to any service, class, category or grade or any post borne on the cadre thereof

unless he-

(a) possesses such qualification and has passed such special tests as may be prescribed in that behalf by the Government, or

(b) possesses such other qualifications as may be considered by the Government to be equivalent to the said special qualifications or special tests.

Since the rules provide M.Ed qualifications for the post of Principal in the College of Education, a person who does not possess such qualification

cannot be appointed on the post.

8. Two main arguments were advanced by the respondents to defend the appointment/posting of respondent No. 4 on the post. Firstly, that she is

a highly qualified lady possessing the Doctors Degree and that she has already been selected by the Public Service Commission as Principal of a

College and that on such selection she was posted and was holding a post of Principal in a Government College; secondly, that there is no qualified

candidate available at present with M.Ed, qualification having 8 years experience as required by Schedule II, who could be posted as Principal of

the College of Education, so under the doctrine of necessity, the respondent No. 4 was appointed against the post.

9. So far the first ground taken is concerned, I do not find any substance in it. Respondent No. 4 no doubt was working as Principal, Government

College for Women, Baramulla at the time she was posted as Principal of College of Education, Srinagar as she has duly been selected as Principal

by the Public Service Commission but for Principal in other Colleges, only a minimum requirement of Master's Degree in any subject is required

while as for the post of Principal in the College of Education, the minimum qualification required is M.Ed. Thus, a member of category A & B of

Class II in the schedule of the said rules, who possesses simply the Master's Degree in any of subjects may validly be posted as Principal in other

Colleges, such a member of the class cannot be posted as Principal of the College of Education, unless he/she possesses minimum qualification of

M.Ed or its equivalent Degree. The respondent No. 4 does not possess the qualification, as such, even if she is eligible for being posted as

Principal in other Colleges, she cannot be posted as Principal of College of Education under the rules.

10. The doctrine of necessity cannot be invoked by the State to justify an action, which is in flagrant violation of the recruitment and where the

candidate lacks the basic qualifications provided by the rules.

11. It was vehemently argued by Mr. Lone, that respondent No. 4 was the most suitable candidate for the post of Principal of College of

Education as she possess very high qualification and has got a very bright academic career at her back. Learned Counsel has referred to the

qualifications of the respondent and submits that though the respondent does not possess the qualification of M.Ed, required for the post, she

definitely possess better qualification, therefore was posted as Principal in such a prestigious institution. I fear the high qualifications possessed by

the respondent cannot help her on the ground that suitability is entirely different from eligibility. A person may, on the basis of his/her higher

qualifications, be suitable for a particular post, but if he/she does not fulfill the eligibility condition he/she cannot be appointed on the post. Learned

Counsel would argue that the degree of Doctor of Philosophy in Commerce, Masters Degree in Commerce and also Masters Degree in Arts,

possessed by the respondent, are high academic qualifications and should be taken as equivalent to the M.Ed qualifications. The contention is

obviously fallacious as all the three former qualifications are academic qualifications while the latter is a professional qualification. The rules provide

M.Ed for the post. Reason is obvious, as the candidate has to teach in the discipline of Education. Accepting the arguments of Mr. Lone, would therefore, amount to distorting the requisite qualification under the rules, to attempt to substitute the academic qualification for the professional qualification. Reliance in this behalf may be placed on *Prit Singh v. S.K. Mangal* 1993 (1) SCC 714.

12. Until and unless the Government by a general order published recognizes any (academic) qualification as equivalent to M.Ed., no candidate having a non-M.Ed, qualification can claim that the qualification possessed by him is equivalent to M.Ed, only because to get that qualification he has put in more labour or studied for more duration than what is required for M.Ed, course. Reference may be made to *Director, A.I.I.M.S. etc.*

Vs. Dr. Nikhil Tandon and Others,

13. In *Chairman, School of Buddhist Philosophy, Leh, Ladakh (J and K) Vs. Makhan Lal Mattoo and Another*, for the post of Principal of School

of Buddhist Philosophy, the Administrative Officer was holding additional charge of Principal. The rules provided through academic background in

Buddhist Philosophy as a qualification for the Post. The Administrative Officer failed to fulfill the requirement, he was removed from the post and a

qualified person was duly appointed as Principal. This High Court to set aside the appointment and allowed the Administrative Officer to continue.

In SLP the Supreme Court set aside the order of the High Court and held that as the Administrative Officer did not satisfy the qualification, he cannot claim to continue in the post.

14. Since the respondent No. 4, whose appointment as the Principal of College of Education is challenged in the present petition, does not possess

the minimum qualification required under the rules for the post, she cannot be permitted to continue on the post.

15. Under these circumstances, the petition is accepted to the extent of relief-i claimed by the petitioner. By a writ of certiorari, the impugned order

of appointment of respondent No. 4 as Principal, College of Education, Srinagar made vide Government Order No. 247-HE of 2004 dated

30.10.2004, is hereby quashed. The result is that the order dated 7th July 2004 shall stand till a regular Principal is posted in the College by the

Government.

16. In view of the pleas taken, I need not to go to the other reliefs of the petitioner and leave it to the State to appoint a person who is eligible for the said post or take any other step which is otherwise permissible under the rules.

Writ allowed to the extent indicated.

Order accordingly.