

(2018) 03 J&K CK 0030
In the Jammu And Kashmir High Court
Case No : LPASW No.41 OF 2018

MANZOOR AHMED AND ANR

APPELLANT

Vs

NARINDER KOUR AND ORS

RESPONDENT

Date of Decision : 14-03-2018

Acts Referred:

Citation : (2018) 03 J&K CK 0030

Hon'ble Judges : BADAR DURREZ AHMED;CJ, SANJEEV KUMAR

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The present appeal is directed against the decision of a learned Single Judge of this Court in SWP No.961/2014 dated 09.02.2018. That was a writ

petition filed by the respondent No.1 in the present appeal. The bone of contention is the post of Rehbar-e-Taleem Teacher in Upper Primary School

Thalkote, Zone Chassana, District Reasi. The advertisement indicated the requirements of one medical candidate and one candidate having 10+2 with

Math.

2. The learned counsel for the appellants submits that insofar as the appellant No.2 is concerned, he has instructions not to pursue this appeal any

further, inasmuch as, the said appellant is already working as Rehbar-e-Taleem Teacher in Mathematics in the said school. The appeal is only being

pressed in respect of the appellant No.1.Â

3. The point that has been taken by the learned counsel for the appellant is that since the specification was for a medical candidate, the subject of

Biology was the only subject which ought to have been considered while evaluating the relative merits of the candidates. He submitted that the writ

petitioner-respondent No.1 had 67 marks out of 150 in Biology, whereas the appellant No.1 had obtained 70 marks out of 150 and therefore, the appellant No.1, according to him, was more meritorious and had been rightly appointed as Rehbar-e-Taleem Teacher and has been working in that capacity since 28.02.2014. He submitted that the learned Single Judge erred in setting aside that appointment and in directing that the respondent No.1-writ petitioner be appointed as the Rehbar-e-Taleem Teacher for the science stream, who was also a medical candidate.

4. On the other hand, the learned counsel for the respondent No.1 submitted that there are two streams, that is, Arts and Science. Insofar as the Science stream is concerned, there are 17(seventeen) combinations which are available. Out of the 17 combinations, only four combinations include the subject of Biology. Those who have taken Biology as a subject are commonly considered to be medical candidates of the science stream. The four combinations are:

- (i) Geology, Geography, Biology
- (ii) Chemistry, Geology, Biology
- (iii) Chemistry, Biology, Geography
- (iv) Physics, Chemistry and Biology

5. In the present case, both the appellant No.1 and the respondent No.1 had taken the last of the four combinations. In other words, they had the combination of Physics, Chemistry and Biology.

6. When the aggregate of the marks for Physics, Chemistry and Biology are taken, it is evident that the writ petitioner-respondent No.1 is more meritorious, inasmuch as, she obtained 223 marks, whereas the appellant No.1 obtained 203 marks in 10+2 examination.

7. However, if only the subject of Biology is taken, then the appellant No.1 has three more marks than the respondent No.1.

8. In our view, the post that was advertised was for science teacher, who was a medical candidate which essentially means that the science teacher should also have studied Biology as a subject. Therefore, we are of the view that, in order to determine the relative merits, it would not suffice if only the marks obtained in Biology are considered. It is the aggregate marks of the combination, which would, determine the relative merits

of the candidates. Consequently, the respondent No.1-writ petitioner being more meritorious, ought to have been appointed as Rehbar-e-Taleem

Teacher and not the appellant No.1. Therefore, to this extent, the decision of the learned Single Judge could not be faulted.

9. However, there is a problem. This is so because there was no fault on the part of the appellant No.1, that he was appointed as the Rehbar-e-

Taleem Teacher and he performed his duties as such teacher for over four years. Furthermore, once he got the post of the Rehbar-e-Taleem

Teacher, he gave up his earlier government job as Stock Assistant in the Animal and Sheep Husbandry Department. Therefore, in our view, it would

be quite iniquitous if the appellant No.1 is left without any job and without any remedy. Consequently, in the special circumstances of this case, we

direct the Commissioner/Secretary to Government, Animal and Sheep Husbandry Department, Government of J&K to consider reappointing the

appellant No.1 in the same post (Stock Assistant), if there is any such post available.

10. With the aforesaid observations and directions, the appeal is dismissed.