

**(1980) 09 J&K CK 0001**  
**In the Jammu And Kashmir High Court**  
**Case No : Writ Petition No. 244 of 1978**

Mohamad Maqbool Pandit

APPELLANT

Vs

Chairman, District Recruitment Board and Others

RESPONDENT

**Date of Decision :** 25-09-1980

**Acts Referred:**

Constitution of India, 1950 — Article 16

**Citation :** AIR 1981 J&K 27 : (1985) 2 LLJ 140

**Hon'ble Judges :** Mufti Baha-Ud-Din Farooqi, Acting C.J.

**Bench :** Single Bench

**Advocate :** P.L. Kaul, for the Appellant; K.N. Bhat, A.A.G., for the Respondent

**Final Decision :** Allowed

## Judgement

1. On 18-10-1977, the District Recruitment Board, Srinagax, (hereinafter called ""The Board"" ) issued an advertisement inviting applications for the

posts of male teachers in the grade of 220-430 in the Education Department. The qualifications prescribed for the posts, as given in the notice,

were as under : (i) M. Sc./M. A. Math. (ii)/B. Sc./Graduate with Geography Commerce, or (iii) B. A., B. Ed/M. A. Arts, or (iv) B. A. with Math.,

or (v) P.B.C trained. The petitioner is a science graduate and he has passed B. Sc. from the Kashmir University in the year 1972. Respondent No.

6 is a simple graduate and he has passed B. A. with Persian and Urdu as his elective subjects. Both of them inter alia applied for the appointment

The Board selected respondent No. 6 for appointment against one of the available posts and rejected the petitioner. By means of this petition

under Article 226 of the Constitution, the petitioner has challenged the selection of respondent No. 6 as void, illegal and without jurisdiction.

2. Before me, sole point urged on behalf of the petitioner was that the petitioner

fulfilled the prescribed qualification and not respondent No. 6 and,  
as such, selection of respondent No. 6 is vitiated, being contrary to Article 16 of the Constitution. In support of this argument reliance was placed  
on the decision of the Supreme Court in Swaran Lata v. Union of India (1979) 1 SLR 710 : 1980 LabIC 8 Subhash Chand Jain Vs. Delhi  
Electricity Supply Undertaking and Others, as also on a decision of the Punjab and Haryana High Court in Kuldeep Singh Gill v. State of Punjab  
1972 SLR 706 : 1973 LabIC 1189 The rationale of these decisions and it has been expressly stated so in the case of Subhash Chand Jain (supra),  
is that qualification for a particular post is a rational differentia under Article 16 of the Constitution. Where qualification has been prescribed and  
duly notified in the advertisement inviting applications, the State cannot obliterate the same by appointing persons who do not possess the  
prescribed qualification as against those who possess that qualification, provided, of course, there is no provision for relaxation of qualification in  
the advertisement notice.

3. In the present case, the admitted position is that the petitioner fulfilled the requirement about the qualification prescribed in the advertisement  
notice, whereas respondent No. 6 did not fulfil such requirement. There was no provision for relaxation in the advertisement notice. On the  
parinciple set out above, the selection of respondent No. 6 is clearly vitiated, being discriminatory. Accordingly the selection of respondent No. 6  
is liable to be set aside and, in that event, it will be open to the District Recruitment Board, to make a proper selection in accordance with law.  
Doing so, would naturally cause great hardship to respondent No. 6 who has been holding the appointment for over two years but this is where the  
Board can help. The board can avoid hardship to re-pondent No. 6 if it feels inclined so to do by accommodating the petitioner on an identical or  
equivalent post. They may not perhaps be able to do so unless a provision is made in that behalf in the final order. I, therefore, propose to so frame  
the final order that the choice is left with the Board.

4. In the result, I allow this petition, set aside the selection of respondent No. 6 and direct that the Board shall hold fresh selection to the post  
vacated by respondent No. 6. I further direct that the aforesaid order shall not have effect if within a period of three months the Board

accommodates the petition on an identical or equivalent post. In the former case, the petitioner shall be entitled to recover costs of this petition

from respondent No. 6 but not so in the latter case. The costs are assessed at Rs. 300/ (Rupees three hundred).