

(2011) 12 J&K CK 0035

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1556 of 2009 and Service Writ Petition (SWP) No. 1821 of 2009

Mohammad Abbas Wani

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 03-12-2011

Acts Referred:

Citation : (2011) 12 J&K CK 0035

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon'ble Mr. Mohammad Yaqoob Mir, Judge

1. Vide advertisement notice issued from the office of respondent No.4, published on 8.10.2009, two ReT posts in up-graded M/S Hergam

Razloo Kund were to be filled up. In the said advertisement notice it was recorded that ""the last date for the submission of application will

determine the cutoff date for age and merit"". Subsequently corrigendum has been issued on 14th of October, 2009 published on 16th October,

2009 where-under the words ""the last date for submission of the application will determine the cutoff date for age and merit"" were replaced by

following words ""the last date for submission of application will determine the cutoff date for qualification and merit"".

2. Petitioner and respondent No.5 had also applied. Vis-`-vis petitioner objection was to the effect that on the 1st January of the year of

advertisement i.e. 1.1.2009, he was not 18 years of age as was short by 13 days, as such, was found ineligible. Same position was challenged by

medium of SWP No.1821/2009. Entertaining the said petition, on 27.11.2009 status quo was directed to be maintained till next date.

Subsequently due to the absence of the petitioner, petition got dismissed in default on 28.5.2010. Then on the application of the petitioner was

restored on 26.7.2010 but in the meantime it appears that the select list was finalized and engagement order in favour of respondent No.5 was

issued on 20.7.2010.

3. Petitioner filed instant petition seeking quashment of the engagement order of respondent No.5 and for issuance of a command in the name of

official respondents to consider the petitioner for engagement as ReT in the said school.

4. The first contention of the learned counsel for the petitioner is that in terms of the corrigendum criteria has been changed i.e. in terms of the

advertisement notice age eligibility was to be determined on the last date of receipt of application but subsequently, in view of the corrigendum it

was qualified that last date for submission of application will determine the cutoff date for qualification and merit.

5. While buttressing his submission, learned counsel for the petitioner relied on the judgment rendered by the Hon'ble Apex Court in case Ashok

Kumar Sharma and Another Vs. Chander Shekher and Another, . In the said judgment appellants passed the examination and were fully qualified

for being selected prior to the date of interview. They had not passed the examination on the date of receipt of the application. It was held that the

appellants were fully qualified on the date of interview. This judgment firstly is of no help to the petitioner because in the reported case the

candidate did not possess the qualification at the time of applying for the post. In the instant case question pertains to the requirement of age. That

apart, the said judgment as relied, has been over ruled by the Hon'ble Apex Court in the same case Ashok Kumar Sharma and Others Vs.

Chander Shekhar and Another, , wherein it has been noticed that advertisement inviting applications required the qualifications to be possessed on

the date of submission of application. The candidates who did not fulfill that requirement but acquired the requisite qualification later before holding

of interview was held impermissible and the contrary majority opinion in Ashok Kumar Sharma's case was held unsustainable as being clear error

of law apparent on the face of record.

7. Now the question is as to whether rectification of error amounts to change of criteria. The answer has to be in negative because as per service

rules the date for reckoning the age has to be determined as on 1st of January of the year of advertisement, therefore, rectification in the

advertisement notice by way of corrigendum so as to bring it in tune with the requirements, does not amount to change of criteria. Thus submission

of the petitioner accordingly is rejected.

8. Learned counsel next contended that the ReT is not a post to which service rules will apply. It is a contractual engagement which has to be

made in accordance with the scheme which has been launched by the Government under the head ""Scheme of Rehbar-e-Taleem"" which has the

object of ensuring people's participation in the management of education at gross route level The scheme as notified vide Government Order

No.396 of Edu 2000 dated 28.4.2000 provides for mode and method of engaging Rehbar-e-Taleem(Teaching Guide) and also prescribes the

eligibility. In the scheme under the head Eligibility Clause 4 is relevant to be quoted:-

4) The candidate shall as far as possible fulfill the age qualification as prescribed by the state government"".

9. Learned counsel would contend that the age prescribed by the State Government shall be applicable as far as possible, so would contend that

there is no strict application of the age prescribed by the State Government.

10. This question has already been set at rest by the Division Bench of this Court in the judgment captioned Shaheena Masarat (Ms.) Vs. State

and Others, . Para 48 is relevant to be quoted:

48.We accordingly for the above stated reasons and also in view of the stand taken by the State that lower and upper age prescribed for making

selection/ appointment against posts under the Government is being applied to the posts under the Scheme as well, we hold that the words, ""as far

as possible"" used in the scheme are to be read down and we have already held in this judgment that the lower and upper age prescribed by the

government for seeking appointment against the posts under the government shall be deemed to be the lower and upper age limit fixed for seeking

selection/engagement under the scheme as well. The Article 37 of the CSR V.1

will thus, get attracted and applicable to the selection/engagement made under the scheme as well"".

11. Applying the same law to the present case, the case of the petitioner falls flat as admittedly on 1st of January, 2009, was 18 years of age,

which is the lower age limit fixed. Therefore, petitioner was ineligible, so has rightly been ignored.

12. Petition on the aforesaid premises, throwing challenge to the engagement order of respondent No.5, is found to be without any merit, so is dismissed.

13. As a result of aforesaid position, SWP No.1821/2009, wherein applicability of Article 37 CSR for engagement of teacher under ReT was

questioned which in view of judgment of the Division Bench of this Court as referred above is not tenable, shall also stand dismissed.