
(2019) 02 J&K CK 0124

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2591 Of 2017, 2278 Of 2018 IA No. 01 Of 2017, 01, 02 Of 2018

Mohammad Gulzar Parray

APPELLANT

Vs

Secretary, Mhrd, Goi & Ors

RESPONDENT

Date of Decision : 26-02-2019

Acts Referred:

National Institute Of Technology Science, Education & Research Act, 2007 — Section 32(2)(b)

Citation : (2019) 02 J&K CK 0124

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : J. A, T. M. Shamsi, Jehangir Iqbal Ganai, Suhail Rashid Bhat

Final Decision : Disposed Off

Judgement

1. The controversy involved in these two writ petitions fundamentally relates to eligibility of the petitioner for the post of Deputy Registrar (Accounts) advertised by the respondents, i.e., the National Institute of Technology, Srinagar, for which the petitioner had offered his candidature.

2. The Registrar of the National Institute of Technology, Srinagar, (for short, NIT), respondent no.4 herein, issued advertisement notice no.07 dated 15.06.2017 inviting applications in the prescribed format from eligible Indian Nationals for certain posts, including the post of Deputy Registrar (Accounts). The educational and other qualifications for the post, as prescribed, were as under:

"Essential:

Master's degree in any discipline with at least 55% marks or its equivalent Grade in the CGPA / UGC point scale with good academic record from a recognised university/institute.

Experience:

- i) 9 years experience of Assistant Professor in the AGP of Rs.6000/- and above with experience in educational administration, or
- ii) Comparable experience in research establishment and for other institutions of higher education, or
- iii) 5 years of administrative experience as Assistant Registrar or equivalent.

Desirable:

- i) Qualification in area of Management / Engineering / Law;
- ii) Experience of working in E-Office System;
- iii) A Chartered or Cost Accountant degree or diploma for the post of Dy. Registrar (Finance & Accounts) or Dy. Registrar (Internal Audit)."

3. In first of these two writ petitions, namely, SWP no.2591/2017, the petitioner claims that he possessed a Post Graduate Degree in Management [MBA (Financial Management)] with more than 55% marks and experience of more than five years as Accounts Officer in J&K Finance Department, which, according to him, is an equivalent post of Assistant Registrar, and, thus, fulfilled the prescribed

eligibility criteria, and offered his candidature for the post of Deputy Registrar (Accounts).

4. It is averred that while the candidates were waiting for further selection process to be undertaken, respondent no.4 issued / uploaded

a notice dated 12.09.2017 bearing endorsement no.NIT/PD/2017/3699-3701 dated 11.09.2017 informing the candidates that the Screening Committee did not find any of the applicants eligible, as none fulfilled the basic required qualification/experience specified in the advertisement notice. Concomitant therewith, respondent no.4 issued a fresh advertisement notice no.09 dated 12.09.2017 inviting applications for the said post, prescribing the same qualifications.

5. The case of the petitioner is that in response to his representation dated 21.09.2017, respondent no.4 vide communication no.NIT/PD/17/4159-61 dated 23.10.2017 informed him that he did not possess the desired experience.

6. Feeling aggrieved of the aforesaid notice dated 12.09.2017 issued by respondent no.4 bearing endorsement no.NIT/PD/2017/3699-3701 dated 11.09.2017 and his communication no.NIT/PD/17/4159-61 dated 23.10.2017, the petitioner challenged the same together with the fresh advertisement notice no.09 dated 12.09.2017 in the first of these two writ petitions seeking a direction to the respondents to proceed with the selection process initiated pursuant to advertisement notice dated 15.06.2017.

7. When the aforesaid writ petition first came up for consideration before the

Court, while issuing notice, the impugned advertisement notice dated 12.09.2017 was stayed qua the post of Deputy Registrar (Accounts).

8. During the pendency of the aforesaid writ petition, SWP no.2591/2017, respondent no.4 issued yet another advertisement notice no.04 F of 2018 dated 14.06.2018 notifying certain posts for direct recruitment which include two posts of Deputy Registrar (Admn/Accounts). In the advertisement notice, it is, however, said that the candidates who have applied earlier pursuant to advertised notice no.07 of 2017 dated 15.06.2017 and no.09 of 2017 dated 12.09.2017 need not apply again, except to submit a plain application for consideration alongwith latest working experience, if otherwise eligible. By this notice, however, the requirement of experience against the third option under the heading 'Experience' has been raised from 5 years to 10 years in the following manner:

"Experience:

- i) 9 years experience of Assistant Professor in the AGP of Rs.6000/- and above with experience in educational administration, or
- ii) Comparable experience in research establishment and for other institutions of higher education, or
- iii) 10 years of administrative experience as Assistant Registrar out of which at least 5 years experience should be in the Grade Pay of Rs.6600/- or equivalent post."

9. Consequent to the above, the petitioner has filed his second writ petition, SWP no.2278/2018, challenging the aforesaid advertisement notice dated 14.06.2018, inter alia, on the grounds that the impugned notice has been issued to defeat the course of justice chosen by him in his earlier writ petition and to exclude him from the zone of consideration. It is stated that it was not open to the respondents to change the eligibility criteria midstream. Further it is stated that the change in the eligibility criteria does not have a statutory backing inasmuch as the Recruitment Rules for non-teaching posts in NITs approved by the Council of NITs in its 3rd meeting held on 18.11.2011 prescribe 5 years of administrative experience as Assistant Registrar or equivalent. It is, however, further stated that the NIT non-teaching Recruitment Rules, 2017 whereby change in eligibility criteria has been made have not yet been adopted by the Board of Governors of the NIT and, therefore, are not in force. It is stated that the petitioner being the only eligible candidate in terms of advertisement notice dated 15.06.2017 has acquired a right to be appointed on the post on the basis of his eligibility and outstanding merit and experience.

10. On issuance of notice by the Court whereas the respondents representing the Union of Indian have chosen not to file any response in the two writ petitions, the respondents 3 to 6 in SWP no.2591/2017 and 2 to 5 in SWP no.2278/2018, representing the NIT have filed their reply in both the petitions.

11. In their reply filed in response to the first of these two writ petitions, the NIT respondents have contested the claim of the petitioner of being eligible for the post principally on two counts: first that he has obtained the Masters'Degree in Business Management only in 'C' grade which is less than the percentage of 55% marks prescribed in the advertisement notice; and second that the petitioner has worked in a lower grade of AGP 4600 while as the requirement of eligibility for the post was of having worked in the AGP of 6000. It is stated that the petitioner was, accordingly, informed that his application was rejected as he did not possess the prescribed eligibility criteria.

12. Insofar as the petitioner's second writ petition is concerned, the NIT respondents, apart from reiterating the stand that he does not possess the basic eligibility requirements of qualification and experience as prescribed in advertisement notice no.07 dated 15.06.2017, have stated that the advertisement notice is not motivated by any mala fide, but has its basis in the decision taken by respondent no.1 on 20.12.2017 in terms whereof the recruitment rules for non-teaching staff of NITs were approved by the competent authority in accordance with the provisions of Section 32(2)(b) of the National Institute of Technology Science, Education & Research Act, 2007. It is further stated that the Board of Governors of the NIT approved the adoption of revised recruitment rules under Resolution no.BOG-09/97 dated 29.09.2018 and consequent thereto, order no.06-BOG/97 dated 29.09.2018 was issued, a photocopy whereof has been placed with the reply as Annexure-R1. It is submitted that the petitioner has no indefeasible right to seek a writ for concluding the process of selection as per the earlier eligibility requirement which stands amended.

13. I heard learned counsel for the parties and considered the matter. The learned counsel argued the matter reiterating the stand taken by them in their respective pleadings.

14. So far as the eligibility of the petitioner for the post in terms of the eligibility criteria prescribed in the first advertisement notice no.07 dated 15.06.2017 is concerned, Mr. J. A. Kawoosa, learned counsel for the petitioner, submitted that the word 'equivalent' has to be given a reasonable meaning and that it connotes some degree of flexibility and adjustment. He submitted that equivalence does not mean exact. According to him, since the petitioner had the working experience on the post of Accounts Officer which is equivalent in status to that of the Assistant Registrar in the NIT, there was no reason or justification for the NIT respondents to hold him ineligible and reject his application form. The learned counsel sought to derive support from a judgment of the Supreme Court in Chandrakala Trivedi v State of Rajasthan, (2012) 3 SCC 129. Further, in support of his argument that change in the norms of recruitment during pendency of selection process is not permissible, he cited and relied upon the judgment of the Supreme Court in State of Bihar v Mithilesh Kumar, (2010) 13 SCC 467. On the other side Mr J.I.Ganai, learned senior counsel for the NIT

respondents submitted that law is settled that fresh selection after change in qualifications for eligibility is permissible even where Examination has been held, results thereof have been declared and interview cards have been issued, and that withdrawal of the notification at this stage and issuance of fresh notification inviting applications from candidates eligible under the new rules is also permissible. The learned counsel in this behalf cited and relied upon the judgment of the Supreme Court in *State of M.P. v Raghuveer Singh Yadav*, (1994) 6 SCC 151. In that case, it has further been held that a candidate passing the examination does not acquire any vested right.

15. The crucial and the fundamental question involved in the first petition, as mentioned at the very outset of this judgment, relates to the eligibility of the petitioner for the post. The locus standi of the petitioner to challenge the later two advertisement notices, especially advertisement notice no.04 F of 2018 dated 14.06.2018, rests on fulfillment by him of the eligibility criteria prescribed in the first advertisement notice. If it is established that the petitioner did not fulfill the eligibility criteria, he would have no locus to challenge the later two notices.

16. There is no denying the fact that the first advertisement notice prescribed Master's degree in any discipline with at least 55% marks or its equivalent Grade in the CGPA / UGC point scale with good academic record from a recognised university/institute as an essential qualification. The petitioner in his writ petition has stated that he possessed the requisite qualification, having done Post Graduation in Management (Financial Management) with more than 55% marks. In support of this assertion, the petitioner has placed on record photocopy of a certificate issued by Indira Gandhi National Open University dated 03.03.2006 certifying that the petitioner after having successfully completed all the requirements in December, 2005 is awarded the Degree of Master of Business Administration with specialization in Financial Management in second Division. This certificate does not indicate the %age of marks obtained by the petitioner. Then the petitioner has placed on record photocopy of another certificate which is titled as Grade Card for Management Programme, Term End Exam December, 2005 issued by Indira Gandhi National Open University, Student Registration and Evaluation Division. It is addressed to the petitioner and at the end records "successfully completed with overall point/letter Grade 3.30 / C specialisation in Financial Management". The respondents in their reply have asserted that Grade 'C' connotes that the petitioner has obtained less than 55% marks. The petitioner has not chosen to file rejoinder to the reply so filed by the respondents, nor has brought anything on record to show to the Court that point/letter Grade 3.30 / C is equivalent to 55% or more marks. Since the petitioner has approached the Court stating that he fulfilled the eligibility criteria, it was obligatory for him to establish his contention. He has, however, failed to produce anything cogent to establish this fact. This is one aspect of the matter.

17. The advertisement notice also prescribed the requirement of three

alternatives of experience, namely, 9 years' experience of Assistant Professor in the AGP of Rs.6000/- and above with experience in educational administration, or comparable experience in research establishment and for other institutions of higher education, or 5 years of administrative experience as Assistant Registrar or equivalent. The petitioner claimed that he possessed 5 years of administrative experience having worked as Accounts Officer in the Jammu & Kashmir Finance Department which post, according to him, is equivalent to Assistant Registrar. The respondents in their reply have stated that the petitioner's experience is in a lower grade than that of what was required in terms of the advertisement notice. It is specifically stated that the petitioner has worked in the grade of AGP 4600 while as the requirement of eligibility was that of having worked in the AGP of 6000. In this context, relying on the observations made by the Supreme Court in para 8 of the judgment in Chandrakala Trivedi v State of Rajasthan (supra), Mr. J. A. Kawaosa submitted that the word 'equivalent' does not mean exactly the same, but has to be given a reasonable meaning, and that the Supreme Court has held that it connotes a degree of flexibility and adjustment.

18. I have minutely perused the judgment of the Supreme Court in Chandrakala Trivedi v State of Rajasthan (supra). Therein the appellant before the Supreme Court possessed qualification higher than the one prescribed in the advertisement notice. She was provisionally selected and then she received a letter from the Rajasthan Public Service Commission informing her that provisional selection had been cancelled as she did not pass the Higher Secondary/Senior Secondary Examination after passing the Secondary Examination. She approached the High Court of Rajasthan. The High Court had given a finding that higher qualification was not a substitute for the qualification of Senior Secondary or Intermediate prescribed in the advertisement notice. In that context, the Supreme Court in paras 7 and 8 of the judgment held as under:

"7. In the impugned judgment, the High Court has given a finding that the higher qualification is not the substitute for the qualification of Senior Secondary or Intermediate. In the instant case, we fail to appreciate the reasoning of the High Court to the extent that it does not consider higher qualification as equivalent to the qualification of passing Senior Secondary Examination even in respect of a candidate who was provisionally selected.

8. The word 'equivalent' has to be given a reasonable meaning. By using the expression 'equivalent' one means that there are some degrees of flexibility or adjustment which do not lower the stated requirement. There has to be some difference between what is equivalent and what is exact. Apart from that, after a person is provisionally selected, a certain degree of reasonable expectation of the selection being continued also comes into existence."

19. From a bare perusal of the aforesaid judgment, it becomes axiomatic that the Supreme Court has laid down that the flexibility or adjustment has to be such as would not lower the stated requirement.

In the instant case, petitioner claims that apart from having Master's in Business Management, he has qualified DIM, PGDIM and PGDFM courses. Obviously, these courses are lower than that of Post Graduation and, in any case, would not be adjustable either for the prescribed per centage of marks of 55% at Post-graduate level, or with 5 years' administrative experience as Assistant Registrar or equivalent. It is also the specific case of the respondents that since the petitioner has worked in a lower grade than the one prescribed in the advertisement notice viz. AGP of Rs. 4600 as against the requirement of Rs.6000, there is no parity or equivalence between the two posts. The petitioner, except seeking to derive a support from the aforesaid judgment of the Supreme Court, has not been able to show to the Court how the two posts could be said to be equivalent when there is such a huge difference in the AGP of the two posts. The AGP held by the petitioner is, again, not adjustable for the AGP requirement of the post of Assistant Registrar; any attempt to adjust the two AGPs would rather lower the stated requirement of the post.

20. In light of what has been discussed above, it is held that the petitioner has failed to show or establish that he possessed the eligibility criteria of qualification and experience prescribed in the advertisement notice no.07 dated 15.06.2017. Consequently, there is no reason or justification available to the Court to quash notice dated 12.09.2017 bearing endorsement no.NIT/PD/2017/3699-3701 dated 11.09.2017 together with communication no.NIT/PD/17/4159-61 dated 23.10.2017 and/or the advertisement no.09 dated 12.09.2017 issued by the concerned respondent(s). Therefore, the first writ petition, SWP no.2591/2017, filed by the petitioner is liable to be dismissed.

21. Coming to the second writ petition, in view of the aforesaid definite finding recorded by the Court about the ineligibility of the petitioner in terms of the qualifications prescribed by the respondents in the initial advertisement notice dated 15.06.2017, it is held that the petitioner has no locus to challenge any fresh advertisement notice issued by the respondents or any change made in the eligibility criteria in accordance with the prevailing Rules. Such a course is otherwise permissible as held by the Supreme Court in *State of M.P. v Raghuvver Singh Yadav* (supra). For facility of reference, paras 5 & 6 of the judgment are quoted hereunder:

"5. It is not in dispute that Statutory Rules have been made introducing Degree in Science or Engineering or Diploma in Technology as qualifications for recruitment to the posts of Inspector of Weights and Measures. It is settled law that the State has got power to prescribe qualifications for recruitment. Here is a case that pursuant to amended Rules, the Government has withdrawn the earlier notification and wants to proceed with the recruitment afresh. It is not a case of any accrued right. The candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered of their claims according to the rules then in vogue. The amended Rules have only prospective operation. The Government is entitled to conduct selection in

accordance with the changed rules and make final recruitment. Obviously no candidate acquired any vested right against the State. Therefore, the State is entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended Rules.

6. The ratio in *P. Mahendran v. State of Karnataka* [(1990) 1 SCC 411] has no application to the facts in this case. In that case, for the posts of Motor Vehicles Inspector, apart from the qualifications prescribed, they issued additional qualifications and selection was sought to be made on the basis of additional qualifications. It was held that since recruitment was sought to be made on the basis of the qualifications prescribed, the additional qualifications prescribed thereafter have no retrospective effect to the recruitment already set in motion. Under those circumstances, additional qualifications were directed not to be taken into account for considering the claims of the candidates on the basis of the original advertisement. The ratio therein is clearly inapplicable to the facts in this case."

Consequently, the second writ petition, SWP no. 2278/2018, filed by the petitioner is held to be without any merit and not maintainable.

22. The two writ petitions are, accordingly, dismissed together with the accompanying IAs. The interim directions passed in the two petitions shall stand vacated. The two IAs filed by the respondents for vacation of the interim directions shall abide by the above decision in the main writ petitions and shall stand disposed of accordingly.

23. No order as to costs.