
(2014) 11 J&K CK 0016
In the Jammu And Kashmir High Court
Case No : SWP No. 778 of 2007

Muneer Ahmad Shigan

APPELLANT

Vs

State of J. & K. and Others

RESPONDENT

Date of Decision : 29-11-2014

Acts Referred:

Citation : (2015) 2 JKJ 200 : (2015) LabIC 854

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Advocate : Altaf Haqani, Advocates for the Appellant; N.A. Baba and M.A. Qayoom, Advocates for the Respondent

Judgement

Hasnain Massodi, J.—Sher-e-Kashmir University of Agricultural Sciences and Technology (SKA-UST for short) vide Advertisement

Notice No. 1 of 2004 dated 19.11.2004 invited applications from eligible candidates for different posts lying vacant in the University including post

of Computer Programmer (Training Assistant). Petitioner and respondent Nos. 4 to 9 in the petition, responded to the Advertisement Notice. They

and other aspirants for the advertised posts participated in the selection process and on its conclusion prepared select list. Petitioner aggrieved with

denial of copy of the select list to him filed writ petition being SWP No. 616 of 2006. However, as the respondents during the pendency of the

writ petition on 15.3.2003 issued appointment orders in favour of respondent Nos. 4 to 9, petitioner was left with no option but to withdraw writ

petition with liberty to file a fresh petition-now throwing challenge to appointment of respondent Nos. 4 to 9 on the grounds available to him. SWP

No. 616 of 2006 was dismissed as withdrawn on 28th May, 2007. Petitioner, soon thereafter i.e. on 5.6.2007, filed writ petition on hand

questioning appointment orders dated 15.3.2007 on the grounds set out in the petition.

2. Briefly stated petitioner's case is that the respondent Nos. 4 to 9 do not fulfill the eligibility criteria laid down in the Advertisement Notice and

therefore could not have been considered, let alone, selected and appointed against the advertised posts. Petitioner insists that none of the

respondent Nos. 4 to 9 has the essential qualification as laid down in the Advertisement Notice, to their credit. He claims to have been the only

candidate, fulfilling the essential qualification for the advertised post and therefore entitled to be appointed as Computer Programmer (Training

Assistant) in the respondent University. He on the strength of averments made in the petition seeks quashment of appointment orders dated

15.3.2006 bearing different numbers, made in favour of respondent Nos. 4 to 9 and a direction to respondent Nos. 1 to 3 to issue appointment

order in his favour.

3. Respondent Nos. 1 to 3 oppose writ petition on the ground that petitioner after he participated in the selection process cannot turn round and

question the selection process. It is pleaded that petitioner was found to be less meritorious than the selected candidates and therefore was not

included in the select list. It is denied that selection process suffers from any irregularity. It is also denied that the date of receipt of application was

extended as claimed in the petition. It is pleaded that Extension Notice applied to Advertisement Notice No. 02 of 2005 dated 14.12.2005 and

therefore qualification, acquired by any of the candidates after the cut off date mentioned in the Advertisement Notice No. 1 was not entertainable.

Respondent Nos. 1 to 3 deny that the selected candidates did not fulfill the essential qualification laid down in the Advertisement Notice. It is

pointed out that as many as 295 candidates were found to be eligible for the advertised post and on conclusion of the selection process,

respondent Nos. 4 to 9 were selected on the basis of their merit. The Selection Committee according to the respondent Nos. 1 to 3, was the best

judge to assess the qualification and experience of the aspirants for the advertised position and the decision taken by the Committee is not open to

question.

4. Petition is resisted by respondent Nos. 4 to 9 on the ground similar to the

grounds urged by respondent Nos. 1 to 3 in their reply. Respondent Nos. 4 to 9 insist that they fulfilled the eligibility criteria and were rightly allowed to participate in the selection process and selected on the basis of their merit and performance in test/interview conducted by the Selection Committee. Respondent Nos. 4 to 9 explain Academic and Technical Qualification/Degrees to their credit, so as to reinforce their claim that they were eligible for the advertised post. Respondent Nos. 4 to 9 without questioning petitioner's eligibility for the advertised post dispute the Degrees/Diplomas secured by the petitioner and their relevance to the eligibility criteria notified by the respondents.

5. Petitioner has responded to the reply filed by respondent Nos. 1 to 3 as well as respondent Nos. 4 and 5. In rejoinder affidavit, filed on 26th May, 2009, petitioner tabulates Academic/Technical Qualification to his credit and that to the credit of respondent Nos. 4 to 9, to convince the Court that none of the respondents is eligible for the advertised post and that petitioner is more meritorious, and therefore ought to have been selected for the post. In supplementary rejoinder affidavit filed on 18-3-2010 it is denied that Bachelor of Information Technology (BIT), Masters Degree in Computer Application (MCA) or Advanced Diploma in Software Engineering (ADSE) and Diploma in Electronic Engineering are equivalent to prescribed qualification. Petitioner in rejoinder to the reply filed by respondent Nos. 4 to 9 in particular disputes eligibility of respondent Nos. 4 & 8 and experience claimed by Respondent Nos. 6 and 7. Petitioner reiterates his stand, insisting that the qualification claimed to have been acquired by him was obtained before the cut of date. He makes an effort to explain and analyze the Degrees claimed to have been acquired by the respondent Nos. 4 to 9 to dispute their eligibility for the advertised post.

6. I have gone through the pleadings, as also record available on the file. I have heard learned counsel for the parties at length.

7. Before dilating on the case set up by the petitioner and the grounds urged by the other side in opposition to the writ petition, it would be advantageous to have a closer look at the eligibility criteria for the post in question.

A bare look at the above reproduced eligibility criteria for the post in question,

would reveal that an aspirant for the post to successfully claim eligibility, was essentially to have any of the following Degrees to his/her credit.

- (i) B.Sc. (Computer Applications) or
- (ii) Bachelors in Computer Applications (BCA) or
- (iii) Post Graduate Diploma in Computer Applications or
- (iv) B. Sc with one year Diploma in Computer Applications.

8. Let us now proceed to examine whether respondent Nos. 4 to 9 did have essential qualification i.e. any of the Degrees serialized above to

his/her credit and therefore his/her eligibility beyond challenge or whether any one or more of them did not fulfill the eligibility criteria and therefore

did not deserve to be selected and appointed against the advertised post. The Degrees/Diploma obtained by respondent Nos. 4 to 9 may be

tabulated hereunder:

9. When Academic/Technical Qualification to the credit of respondent No. 4 is compared with the essential qualification prescribed for the posts, it

is more than evident that respondent No. 4 did not have essential qualification to her credit. Respondent No. 4 has obtained Bachelors Degree in

Information Technology (BIT). The Degree does not find place in the essential qualification serialized in the Advertisement Notice. In other words,

respondent No. 4 does not have B.Sc. (Computer Applications), Bachelors Degree in Computer Applications, Post Graduate Degree in

Computer Applications, B.Sc. with one year Diploma in Computer Applications to her credit and therefore was not eligible for the advertised post.

The plea that as respondent in addition to Bachelors Degree in Information Technology (BIT), has done Advance Diploma in Computer

Applications (ADCA), Masters in Computer Management and the Degree is to be taken as equivalent to Post Graduate Degree in Computer

Applications (PGDCA) is of no help to respondent No. 4. In the first place, the essential qualification required in terms of Advertisement Notice

did not contemplate any, "equivalent course". In case it was found appropriate by the respondent University to entertain or accept any qualification

as equivalent to essential qualification, it would have expressly left room in Advertisement Notice for equivalent qualification. In such case, the

relevant column of the Advertisement Notice providing for essential qualification

to advertised post would have read as under:

As no such provision was made in the Advertisement Notice, the question of equivalency does not arise. This apart, IT Concepts, New Airport

Road, Parray Pora, Srinagar claiming to be authorized centre of Sikkim Manipal University is not an authority competent to declare Post Graduate

Diploma in Information Technology equivalent to Post Graduate Diploma in Computer Applications. The equivalence Certificate relates to the

programmes offered by Sikkim Manipal University and there is nothing on record to suggest that respondent No. 4 had Post Graduate Diploma in

Information Technology (PGDIT) from said University. Similarly, the communication addressed by Registrar J&K Board of Technical Education

vide letter No. SBOTE/11/1976 dated 24/08/2011 to Shri Mian Qayoom, Advocate, J&K High Court Srinagar (Annexure-R-10) is of no

relevance to the present controversy. Respondent No. 4 claims to have Bachelors Degree in Information Technology (BIT) to her credit and the

communication refers to Diploma offered by Polytechnic Colleges of Jammu and Kashmir State affiliated to Jammu and Kashmir State Board of

Technical Education. Respondent No. 4, in the circumstances was not eligible for the advertised post and did not have right to participate in the

selection process, let alone get appointed as Computer Programmer (Training Assistant) in the respondent University.

10. Shri Yasir Arafat-respondent No. 5 Has obtained Bachelor of Science Degree (B.Sc.) from University of Kashmir. He, therefore, satisfies first

part of the essential qualification. He would be eligible for the advertised post if he has one year Diploma Course in Computer Applications to his

credit. The pleadings and record available on the file would reveal that respondent No. 5 after his B.Sc. Degree has obtained Diploma in

Information Technology (DIT) and M.Sc. Information Technology (M.Sc. IT) from Sikkim Manipal University of Health, Agriculture and

Technological Science in the year 2002. Firstly, it sounds far from convincing that the respondent No. 5 has secured both Degrees i.e. Diploma in

Information Technology (DIT) and M.Sc. Information Technology (M.Sc. IT) from Sikkim Manipal University of Health, Agriculture and

Technological Science in the same year. Even, if, the Degrees are to be taken as genuine, respondent No. 5 does not fulfill the eligibility criteria

inasmuch as he does not have one year Diploma in Computer Applications (DCA). We have, for the reasons discussed in the preceding paras,

concluded that any Degree other than mentioned in the Advertisement Notice is not to be considered for selection to the advertised post.

Respondent No. 4 therefore cannot be heard saying that his Diploma in Information Technology (DIT) and M.Sc. Information Technology are

equivalent to one year Diploma in Computer Applications. The Certificates issued by IT Concepts authorized learning Centre of Sikkim Manipal

University of Health, Agriculture and Technological Science and Communication addressed by Registrar J&K State Board of Technical Education,

Srinagar dated 24-08-2011 to Shri Mia Abdul Qayoom, Advocate, J&K High Court, Srinagar are therefore of no help to respondent No. 4 and

do not change complexion of the matter. In the circumstances, respondent No. 5 was not eligible for the advertised post and was unjustifiably

allowed to participate in the selection process and appointed against the advertised post.

11. Let us now go to the admitted academic record of Riyaz Ahmad Pandith - respondent No. 6. Respondent No. 6 secured Bachelor of Science

(B.Sc.) Degree from University of Kashmir in the year 1992. He would be eligible for the advertised post, in case, he has one year Diploma in

Computer Applications or Post Graduate Diploma in Computer Applications to his credit. He has obtained M.Sc. (Electronics) from University of

Kashmir in the year 1997. This Degree is not to make him eligible for the advertised post. However, respondent No. 6 has also one year Post

B.Sc. Diploma in Computer Applications. The Marks Certificate (Annexure P-13) does not indicate duration of the Course. However, as the

Course included seven subject areas including project work, it is to be assumed that it was a one year Diploma Course. Respondent No. 6,

therefore, was eligible and rightly considered by the Selection Committee for the advertised post. In the said background, it is not necessary to

examine the value of M.Sc. (Electronics) Degree to determine respondent No. 6's eligibility for the post.

12. Shri Nazrul Islam-respondent No. 7 has obtained Bachelor of Commerce (B.Com.) Degree from University of Kashmir in the year 1997. It

may be recalled that a candidate having Bachelors Degree in any discipline would be eligible for the advertised post, in case, he has Post Graduate

Diploma in Computer Applications to his credit. The mere fact that respondent No. 7 has Degree in Commerce and not in Science stream

therefore would not affect his eligibility. Respondent No. 7 on his own admission, as evident from Annexure R-17 placed on file has obtained Post

Graduate Diploma in Computer Applications (PGDCA) from Computer City Technology Centre, New Zero Bridge, Rajbagh, Srinagar. The

Centre is a Small Scale Industrial (SSI) Unit. It needs no emphasis that when respondent University asks for a Degree or Diploma, such Diploma

must be from recognized University or an Institute affiliated to the University or All India Technical Education Council (AITEC) or State Board of

Technical Education. The Diploma from a Small Scale Industrial Units does not satisfy the requirement of a Diploma awarded by University,

Government Polytechnic or Polytechnic College affiliated to and recognized by the University or All India Technical Education Council (AITEC) or

State Board of Technical Education. The Diploma sought to be relied upon by respondent No. 7 is nothing except ""Paper Diploma"" without any

value whatsoever. The Certificate issued by Computer City Technology Centre does not indicate that the Centre is affiliated to any University or

All India Technical Education Council (AITEC) or State Board of Technical Education. It is pertinent to point out that even where a private

Polytechnic is allowed by the University or Board to conduct a Course, the examination is conducted by the Board and Certificate issue by such

Board or University. For the same reasons, Post Graduate Diploma in Computer Applications granted by Sri Sathya Sai Institute of Higher

Learning is of no value and does not arm respondent No. 7 with necessary qualification to claim eligibility for the advertised post. Respondent No.

7 for the reasons discussed was not eligible for the advertised post and ought not to have been allowed to participate in the selection process much

less selected and appointed for the advertised post.

13. Shri Mohd Iqbal Koul-respondent No. 8 obtained National Trade Certificate from ITI Srinagar in year 1981. He obtained Post Graduate

Diploma in Computer Applications from Indira Gandhi National Open University (IGNOU) in addition to above Diploma. He has also acquired

Certificate in Computing (CIC) from Indira Gandhi National Open University (IGNOU) in the year 2003. The National Trade Certificate from ITI

Srinagar or Certificate in Computing (CIC) from Indira Gandhi National Open University would not make respondent No. 8 eligible for the advertised post. However, Post Graduate Diploma in Computer Applications from Indira Gandhi National Open University (IGNOU) on the first look, would lead to conclusion that respondent No. 8 was eligible for the advertised post. A closer look at the selection record made available by learned counsel for respondent Nos. 1 to 3 reveals that Diploma was secured by respondent No. 8 much after the cut of date. Respondent No. 8 in his application did not claim to have Post Graduate Diploma in Computer Applications (PGDCA) to his credit and obviously did not annex a photocopy of the Diploma to his application. The selection record does not extend support to his claim. The Diploma was completed in last week of December 2005 and a formal Diploma must have been issued to him sometime in 2006. The cut of date for receipt of application as insisted by respondent Nos. 4 to 9 was 15th December 2004. Respondent No. 8 did not have Post Graduate Diploma in Computer Application (PGDCA) from Indira Gandhi National Open University (IGNOU) on the cut of date and not even on the date of interview inasmuch as copy of the Diploma is not available on the selection record. Respondent No. 8 against the above backdrop did not fulfill the essential qualification on the relevant date and therefore was not eligible for the advertised posts.

14. Respondent No. 9 with Bachelor of Science (B.Sc.) Degree from Kashmir University and Post Graduate Diploma in Computer Applications (PGDCA) from Indira Gandhi National Open University (IGNOU) obtained much before the selection process was initiated fulfills essential qualification laid down in the Advertisement Notice. There is no need to refer to other Certificates, Diplomas and Degrees to his credit.

15. From the above over view of the facts, it is to be concluded that respondent Nos. 4 to 9 with the exception of respondent Nos. 6 and 9 were ineligible for the advertised post and ought not have been allowed to participate in the selection process, much less selected and appointed as Computer Programmers (Training Assistant) in the respondent University. Let us now look at the petitioner's academic record.

16. It is pertinent to point out that petitioner's eligibility is not disputed by the respondent Nos. 1 to 3. He has been allowed to participate in the

selection process and considered for the advertised post. Respondent Nos. 4 to 9 dispute some of the Degrees claimed by the petitioner to have

been earned by him, without putting question mark on his eligibility. It may nonetheless be seen, whether petitioner was eligible for the advertised

post as his ineligibility would knock the very bottom out of his case.

17. Petitioner has passed Bachelors of Science (B.Sc.) Degree from University of Kashmir in the year W99. He has thereafter obtained a number

of Degrees including Post Graduate Diploma in Computer Applications (PGDCA) from Indira Gandhi National Open University (IGNOU). He

has successfully completed the Course in December 2002. Petitioner in his application for the post entered Post Graduate Diploma Course in

Computer Applications (PGDCA) at Serial No. 3 Column No. 12 detailing his academic and technical qualification. Petitioner, therefore, fulfills the

essential qualification laid down in the Advertisement Notice. This apart petitioner has done Advanced Diploma in Information Technology (ADIT)

in the year 2002, Certificate in Computing (CIC) in the year 2001, Advanced Diploma in Computer Application (ADCA) in the year 2004 and

other Courses. In the circumstances, the plea raised in para 2 of the reply filed by respondent Nos. 4 to 9 that petitioner was not eligible, as the

Courses claimed to be completed, had no relevance and that Post Graduate Diploma in Computer Applications was completed in December 2004

and its result was declared in 2005 i.e. beyond the cut of date is without substance. Petitioner, therefore, was eligible for the post and rightly

allowed by the respondent University to participate in the selection process.

18. The selection record produced by the learned counsel for respondent Nos. 1 to 3 would reveal that the Selection Committee evaluated merit

on a scale of 100 points with the following distribution:

The Selection Committee did not adopt a uniform methodology to award points on the basis of marks secured in graduation. It may be recalled

that in terms of Advertisement Notice, Graduation in Computer Applications or any other subject with Diploma in Computer Applications was

essential qualification. The Committee, therefore, was to award points/marks secured by candidate at the graduation level. This was not done and

instead different exams passed by the candidates in addition to graduation in Science or other subjects taken into account while awarding points.

The Selection Committee worked out points on the basis of marks obtained in a Course like Bachelors of Information Technology (BIT) not a prescribed qualification under the Advertisement Notice.

19. This apart marks awarded on account of experience were assessed and awarded in an arbitrary manner. It may be recalled that in terms of

Advertisement Notice, the desirable experience was ""02 years experience in handling agri. based data on computer"". It follows that with an equal

merit, a candidate with experience in ""handling agri. based data on computer"" would get preference. To illustrate, Sumaira Shafi-respondent No. 4

was awarded no marks for experience, Shri Yasir Arafat-respondent No. 5 was also awarded no marks for his experience, Shri Nazrul Islam-

respondent No. 7 was awarded 08.25 marks for experience, while Shri Mohd. Iqbal Koul-respondent No. 8, was awarded 2.00 marks. None of

the respondents had experience in ""Handling agri. based data in computer"" and experience claimed did not have a reasonable nexus with computer

applications. The Selection Committee, therefore, did not make the assessment of all candidates appearing in interview in a fair uniform and

objective manner. The process, in the circumstances being taintful with arbitrariness cannot stand legal scrutiny.

20. The plea that petitioner has slept over the matter and questioned appointment of respondent Nos. 4 to 9 after inordinate delay is without

substance. The plea is made unmindful of the fact that the selection list was not made public and copy of the list denied to the petitioner

constraining him to file writ petition being SWP No. 616 of 2006. Once it dawned on the petitioner that he did not find place in the selection list

and appointment orders were issued in favour of respondent Nos. 4 to 9, he withdrew petition with permission to question selection and

appointment made by respondent University. He immediately thereafter filed writ petition on hand. Petitioner can hardly be blamed for any delay in

questioning the selection and appointment of respondent Nos. 4 to 9.

21. From the above discussion, it is evident that respondent Nos. 4, 5, 7 and 8 though ineligible were not only considered but selected and

appointed as Computer Programmer (Training Assistant) in the respondent University, and that too not on proper assessment of their merit, even

as per the methodology adopted by the Selection Committee. The conclusion so

drawn is to result in setting aside selection and appointment of respondent Nos. 4, 5, 7 and 8 and to direct respondent Nos. 1 to 3 to assess afresh merit of all eligible aspirants for the advertised post and make selection accordingly. However, such a recourse shall dislodge respondents 4, 5, 7 and 8, a few years after their selection and appointment.

Respondent Nos. 4 to 9 are serving respondent University without any interruption for last more than seven years. Some of them, if, not all must have by now crossed upper age limit for Government employment as prescribed under Jammu and Kashmir Civil Services Regulations. It would be appropriate to examine whether petitioner can get fruits of present litigation without dislodging respondent Nos. 4 to 9.

22. Respondent No. 6, one of the two candidates amongst respondent Nos. 4 to 9 eligible for the advertised post has tragically died on 15-2-

2013 during pendency of writ petition. The post admittedly is unfilled and lying vacant as on date. Petitioner can be appointed against the post left vacant due to untimely demise of respondent No. 6 without disturbing other respondents.

23. Such a course is available in terms of law laid down in State of J. & K. v. Basant Kumari & Ors. 1992 SLJ 314. In the said case, writ court while allowing the writ petition observed as under:

In these circumstances, I do not propose to quash the selection and appointment of the respondents teachers, but at the same time, cannot ignore the fact that the fundamental rights of the petitioner have been violated by depriving them of the right to be selected and appointed as teachers. The right stands vested in the petitioner to seek protection of this court for enforcement of their fundamental rights enshrined under Article 16 of the Constitution.

I, therefore, allow the petitions to the extent that the petitioners in both the writ petitions excepting those whose claim has been dismissed by this order for not pressing the same, shall be appointed as teachers by the respondents 1 to 5, forthwith in the District of Baramulla against available vacancies without disturbing the selection and appointment of the respondent teachers. Both the writ petitions are accordingly disposed of"".

The writ court judgment was questioned in Letters Patent Appeal. It was urged that the court lacked power to direct appointment while selection

was found to have been made in de-hors Rules. The LPA Court after discussing the case law in Surya Narain Yadav and Others Vs. Bihar State

Electricity Board and Others, on the subject observed:

Thus the ratio decidendi of the decision referred to hereinabove is that the court is within its competence to issue directions for making

appointments, when the court has come to the conclusion that the appointments, to the post involve denial of constitutional rights and violation of

fundamental rights. So the question is answered accordingly.

The court proceeded to dismiss the appeal and upheld the order of learned single Judge allowing the writ petition No. 500 of 1987 titled Basant

Kumari & Ors. v. State and Ors.

For the reasons discussed, writ petition is allowed and respondent Nos. 4, 5, 7 and 8 held not to have been eligible for the advertised post and

appointed notwithstanding their ineligibility. The selection process is also held to be arbitrary and therefore in conflict with Articles 14 and 16

Constitution of India. However without disturbing appointment of other respondents, respondent Nos. 1 to 3 are directed to appoint petitioner

against the available post of Computer Programmer (Training Assistant) subject to completion of usual formalities like verification of antecedents,

Academic Certificates etc, applicable under rules like.