
(2019) 04 J&K CK 0125

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1433 Of 2010, IA 01 Of 2018, 2010 & 2010

Neeta Devi Sharma

APPELLANT

Vs

State Of Jammu State Service Selection Board & Ors

RESPONDENT

Date of Decision : 09-04-2019

Acts Referred:

Jammu And Kashmir Subordinate Services Recruitment Rules, 1992 — Rule 13(ii)

Citation : (2019) 04 J&K CK 0125

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : P. N. Bhat, Amit Gupta

Final Decision : Allowed

Judgement

1. Petitioner has approached this Court seeking a direction to the respondents to consider and appoint the petitioner for the post of Physical Education

2. Brief facts which arise for consideration are that Service Selection Board vide Advertisement Notice No.06 of 2008 dated 28.05.2008 invited applications for the post of Physical Education Teachers in various Districts of Jammu & Kashmir State i.e. Kathua, Ramban, Reasi, Udhampur and Jammu, Kathua, Ramban, Reasi. Procedure to apply for more than one post was provided in Clause-IV of the Advertisement Notice under the head, 'APPLICATION FOR MORE THAN ONE POST/DISTRICT CADRE', it is stated that,

(i) Candidates who are eligible for making application for more than one post are required to apply on the prescribed application form separately for each post or for the same post in different cadres.

The single application form filled in for more than one post/cadre shall render the application liable to rejection without notice.

(ii) SRO 343 dated 13.10.2004 allows the candidate to apply in one District for

District Cadre post and in one Division in respect of Divisional Cadre post who are permanent residents of J&K State prescribing the conditions of domiciliary requirements. Provided that if any candidate applies for more than one district or division, his/her candidature shall be considered only for the district or division in which he/she is ordinarily residing.

(iii) Those applicants who choose to apply for district cadre posts other than the district of domicile, shall deposit their application forms in the district where they are residing.

3. Petitioner's contention is that after considering Advertisement Notice No.06 of 2008 dated 28.05.2008, and conditions in SRO 343 dated 13.10.2004 because of the specific bar provided in the notification, applied for District Kathua only. Select list was published in daily newspaper dated 16.05.2010 and in terms of the select list, petitioner stood at serial No.2 of the waiting list whereas private respondent Nos.4 to 6 have been selected in District Kathua.

4. Petitioner is aggrieved of the selection of respondent Nos.4 to 6 in Kathua District for the post of Physical Education Teacher on the ground that respondent No.4 had applied for all districts in Jammu Division and was selected as Physical Education Teacher in Districts Kathua & Udhampur whereas respondent No.5 had also applied for all Districts of Jammu Division and she was selected in Districts Reasi and Kathua and similarly, respondent No.6 had applied for all Districts of Jammu Division but was selected in District Kathua only. Respondent Nos.4 to 6 were figured at serial Nos.119, 121 & 122 of the select list respectively. Thus, it is submitted that in terms of SRO 343, respondent Nos.4 to 6, who admittedly are residents of Jammu Districts, though could have applied in all Districts but in case, they had applied in more than one District, their candidature was to be considered only in the district or Division in which they were ordinarily residing. Since they were all residents of District Jammu, therefore, their candidature should have been considered for Jammu, as such, selection in District Kathua is in violation of SRO 343 dated 13.10.2004. It is submitted that in case, respondent Nos.4 to 6 were considered in their own Districts i.e., Jammu, the petitioner being next in merit would have been selected for the post of Physical Education Teacher in Kathua, thus, the official respondents by violating the provisions of the Jammu and Kashmir Subordinate Services Recruitment Rules, 1992 as amended vide SRO 343 dated 13.10.2004 have denied the appointment to the petitioner against rules.

5. Respondent Nos.1 & 2 have filed their objections but respondent Nos.4 to 6, despite service, have not caused their appearance. Respondent Nos.1 & 2 in Para 5 of their objections admitted that the selection has been made strictly as per SRO 343 dated 13.10.2004 and no candidate has been selected/recommended for two Districts. Respondent No.4 was provisionally selected in District Udhampur and Kathua but was deleted in District Udhampur and recommended in District Kathua only and similarly respondent No.5 was provisionally selected in District Reasi and Kathua, however, she has finally been selected in District

Kathua and respondent No.6 has been selected in District Kathua only. Respondent Nos.1 & 2 further submitted that respondent No.4 had applied in Kathua District only, therefore, was selected in Kathua District but so far as respondent Nos.5&6 are concerned, they have been provisionally selected in more than Districts but were selected in Kathua District only. They further submitted that they have been selected in view of their superior merit.

6. Despite opportunities, official respondents have not produced the record, as such, this petition is being considered on the basis of objections filed by them.

7. It is the admitted case of the petitioner that both respondent Nos.5&6 have applied in more than one Districts, as such, in terms of the provisions of the Jammu and Kashmir Subordinate Services Recruitment Rules, 1992 as amended vide SRO 343 dated 13.10.2004, Rule 13(ii) post amendment reads as under:-

'13. Procedure of selection by the recruitment board. The board shall make selection to the various posts in the following manner:

(i) - - - - -

(ii) A candidate can apply only in one district for District cadre posts and in one Division in respect of Divisional Cadre posts; '

Provided that if any candidate applies for more than one District or one Division, his candidature shall be considered only for the District or the Division in which he is ordinarily residing."

8. This amended rule was also incorporated in Clause-IV of the Advertisement Notice, as such, respondent Nos.5 & 6 having applied for appointment in their home districts as well as other districts, could only be considered for appointment in their home Districts only even if they have made merit in different districts.

9. There is merit in the submission of the petitioner that respondent Nos.5&6 having applied in more than one district were to be considered only in their home district notwithstanding the fact that they have made merit in other district also, similar controversy was considered by the Hon'ble Division Bench of this Court in LPA No.02 of 2017 titled Pawan Kumar vs. State & ors. decided on 25.10.2018 and Para No.13 of the judgment reads thus:-

"13. The facts of the present case are slightly different. Had the respondent No.3 not applied for appointment in his home district, the amended Rule 13(ii) would not have been attracted in the present case and upon making up the merit, he could certainly be held entitled for appointment. However, in the presence of the amended Rule 13(ii), because respondent No.3 had applied also for his home district Doda, he could only be considered for appointment in his home District notwithstanding the fact that he could make up the merit in a different district.

10. This Court while considering the matter on admission vide its order dated 04.06.2010 had reserved one post of Physical Education Teacher under the

reserved category of ALC for District Kathua.

11. Thus, in view of the aforesaid decision, this petition is allowed. Respondent No.2 is directed to recommend the name of the petitioner to respondent No.3 (indenting Department) within a period of four weeks who shall pass an order thereon within three weeks thereafter. Since the post has already been reserved, there would be no difficulty for the petitioner to be appointed on the said post. The petitioner's appointment shall have an effect from the date, the other candidates were appointed in the said district and she is also entitled to benefit of notional seniority (and not monetary benefits) of the post.

12. Writ petition is, accordingly, allowed in the aforementioned terms.