

(2014) 11 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : SWP Nos. 2154, 2393, 2419, 2467, 2485, 2531, 2709, 1166 Of 2013 and 431/2014

Nirvair Singh and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Citation : (2015) 1 JKJ 320

Hon'ble Judges : Tashi Rabstan, J.

Bench : Single Bench

Advocate : Abhivan Sharma, Advocate, for the Appellant; M.A. Bhat, for the Respondent

Final Decision : Allowed

Judgement

Tashi Rabstan, J.â?"Since common questions of facts and law are involved in all these petitions, I deem it proper to dispose of the same by this

common judgment. Through the medium of this petition, the petitioners are seeking quashing of Notice No. SSB/Set/Say/12/2337-43 dated

06.09.2012 issued by the Secretary, J&K Service Selection Board, revising the criteria for the post of Accounts Assistant. They are also seeking

quashing of Corrigendum No. SSB/Sel/Secy/012/2576-80 dated 20.09.2012, whereby the respondent-Board has decided to conduct the written

test for determining the merit of the candidates in place of academic merit. Consequently, the petitioners are seeking a direction to the respondents

to appoint them against the post of Accounts Assistant on the basis of their merit obtained in the select list dated 26.09.2011 pertaining to District

Cadre Jammu and select list dated 30.09.2011 pertaining to District Cadre Samba.

2. The case as projected by the petitioners in their writ petitions is that the Service Selection Board (for short, SSB) vide Advertisement Notice

No. 07 of 2010 dated 12.11.2010 invited applications for a total number of 5845 posts in various departments including 872 posts of Accounts

Assistant, State/District Cadre.

3. The present case is with respect to the selection of Accounts Assistant for District Cadre Jammu and District Cadre Samba. 108 posts of

Accounts Assistant were advertised for District Cadre Jammu, while 12 posts were meant for District Cadre Samba in the pay scale of Rs. 5200-

20200. The criteria fixed were 70 points for Graduation (pro-rata basis), 10 points for Post Graduation (pro-rata basis) and 20 points for Viva-

voce.

4. As all the petitioners were having requisite academic as well as higher relevant qualification having direct nexus with the post of Accounts

Assistant, they applied in pursuance of the advertisement notice against the said post under Open Merit. They came to be short listed for interview.

Accordingly, they appeared before the Select Committee and were duly interviewed. Thereafter, provisional select lists of the candidates for the

post of Accounts Assistant, District Cadre Jammu and District Cadre Samba were published on 26.09.2011 and 30.09.2011 respectively,

wherein the petitioners had been shown as provisionally selected. However, before the provisional select lists could be implemented, the

respondent-Board issued Notice No. SSB/Set/Say/12/2337-43 dated 06.09.2012 revising the criteria for the post of Accounts Assistant. The

revised criteria are reproduced hereunder:

5. Thereafter, the respondent-Board issued Corrigendum vide No. SSB/Sel/Secy/012/2576-80 dated 20.09.2012, whereby the respondent-

Board while modifying the eligibility criteria has decided to conduct the written test for determining the merit of the candidates in place of academic

merit, i.e., the respondent-Board replaced the academic merit of 70 points (pro-rata basis) with the written test. The relevant portion of the

corrigendum is reproduced hereunder:

However, the Board may in terms of the laid down policy decide to conduct a written test for determining the merit of the candidate to replace the

academic merit (i.e. 70 points). The merit secured in such written test shall be

considered for admitting the candidates in viva-voce and in place of academic merit for selection of the eligible candidates.

6. Vide the said Corrigendum, Masters in Information Technology, Computer Sciences, Finance & Accounting, Computer Applications and

Financial Control were also added as the required Post Graduation qualification for the said post. Respondent-Board also decided to conduct the

written test for determining the merit of the candidates replacing the academic merit of 70 points (pro-rata basis). And the merit secured in such

written test was decided to be the eligibility condition for admitting the candidates in viva-voce. The petitioners being aggrieved of Notice dated

06.09.2012 and Corrigendum dated 20.09.2012 have filed the present writ petitions.

7. It is contended that the basic/old criteria relating to the graduation remained unchanged excluding B.Ed., i.e., candidates were required to be in

possession of graduation in any line excluding B.Ed., whereas the respondent-Board has drastically changed the criteria for P.G. Degree, an

additional qualification, which was not the intent of the Court nor the same was in accordance with the mandate of this Court in SWP No.

586/2011 decided on 30.04.2012 in the Srinagar Wing of this Court. The only concern of the Court was to see relevance of some specified

subjects for making selection to the post of Accounts Assistant, i.e., whether B.Ed., B.Sc. Forestry, B.Sc. Fisheries or other such degrees were

commensurate/relevant for selection to the post-in-question. It is contended that the revised criteria prescribing 70 points (pro-rata) for graduation

in any line cannot stand the test of law, inasmuch as if the criteria was required to be recast, 70 points should have been earmarked for graduation

in the line corresponding to the post of Accounts Assistant and not graduation in any line, which, for instance, may include Graduation in Music,

Fine Arts, Forestry, Fisheries, Agriculture or, for that matter, in Sanskrit or Persian, which disciplines are not relevant for the post of Accounts

Assistant. Thus, it is contended, that unequal cannot be treated as equal. Further, it is contended that this Court in the aforementioned writ petition

had never issued any direction regarding conducting of written test for the purpose of making selection against the post-in-question replacing the

basic criteria of 70 points in graduation (pro-rata basis).

8. Objections have been filed on behalf of respondent-Board. It is stated that some of the candidates, who failed to make the grade for short-

listing for the post of Accounts Assistant, filed SWP No. 586/2011 in the Srinagar Wing of this Court, questioning consideration of B.Ed.,

qualification on the ground that the same was not relevant for the post. It is contended that the Court while disposing of the writ petition observed

that prima facie it appears that B.Ed., degree has not even the least relationship with the post of Accounts Assistant and directed the respondent-

Board to relook into the whole issue and take a fresh decision. Thus, it is contended that the respondents after re-examining the whole selection

process in terms of the observations of this Court elucidated/rationalized the criteria for the post of Accounts Assistant vide Notification dated

06.09.2012 and Corrigendum dated 20.09.2012, impugned herein. Further, it is contended that the petitioners cannot claim their appointment

merely on the ground that their names figured in the provisional select lists.

9. Heard learned counsel for the parties and perused the writ record.

10. The question for consideration is whether the respondent-Board can revise/recast the criteria after culmination of the selection process and

issuance of provisional select lists, thereby making the same retrospective and requiring the selected candidates to again go through the short-listing

criteria in terms of the revised/changed criteria.

11. The only stand taken by the official respondents is that the necessity of issuing the revised criteria was to implement the judgment passed by

this Court. Therefore, before proceeding further, it would be appropriate to reproduce the relevant part of the judgment hereunder:

12. True it is that in the advertisement notification, the eligibility qualification for the posts of Accounts Assistants was prescribed as graduation

and it was not specified as to, amongst the degrees of graduations which degree is to be included and which is to be excluded. It is also true that

after a candidate is selected in the selection process for being selected as apprentices with the ultimate design to appoint him as Accounts

Assistant, he has to undergo the training course. Having said so, can it be said that for a service and a post which has a definite purpose to achieve,

the qualification of B.Ed., would be relevant. The authority, which is charged with the duty of making selection, cannot be permitted to choose the

course of selection in a manner which may ultimately defeat the very purpose of constituting the service and creating the post in that service. It is

not in dispute that B.Ed., is not a recognized degree but it would be a constitutional duty on part of the appointing authority and SSB to ensure that

a person possessed with relevant degree for the post is brought under the purview of selection process and the meritorious candidate amongst that

class is selected and appointed on a particular post. It, prima facie, appears that B.Ed., degree has not even the least relationship with the post of

Accounts Assistant, but what is important in this case is that the eligibility qualification prescribed is graduate. Even the candidates possessed of

B.Sc. Agriculture degree etc. have been considered and subjected to selection process for the post of Accounts Assistants. Not only that, the

degrees like B.Sc. Forestry and B.Sc. Fisheries have also been considered while short listing the candidates. It would be required to be seen as to

whether besides B.Ed., degree, the aforementioned degrees are relevant for the posts of Accounts Assistants.

13. In the fast growing academic field, while people are obtaining degrees in different academic/professional and technical courses and while

candidates who are possessed of degrees in academic/professional and technical courses apply in bulk, it remains to be seen as to whether the

candidates with degrees in such courses which may not be relevant for the post, can also be considered for being selected on such posts. Since the

constitutional mandate is to constitute the service and create posts to serve the interests of people at large, the competent authority would be

required to have a relook into the whole issue and take a fresh decision...

12. A perusal of the above-referred direction makes it crystal clear that though the Court was of the view that the degrees like B.Ed., B.Sc.

Forestry and B.Sc. Fisheries have not even any least relationship with the post of Accounts Assistant, the candidates possessing such degrees have

also been considered for selection to the said post. Although the Court while deciding the aforesaid petition expected the Service Selection Board

to have a relook into the whole issue, yet the concern of this Court was that the SSB should "ensure that a person possessed with relevant degree

for the post is brought under the purview of selection process and the meritorious candidate amongst that class is selected and appointed on a

particular post". The observations of the Court were only regarding the basic/academic qualification of graduation in a particular line commensurate

with the post in question and there was not even a whisper with regard to the additional qualification of Masters Degree, yet the respondent-Board

in the revised criteria required a candidate to be in possession of graduation in any line excluding B.Ed., and Masters Degree in Math, Commerce,

Economics, Statistics, Information Technology, Computer Sciences, Finance & Accounting, Financial Control, Business Administration,

International Business and Computer Applications. The respondent-Board further decided to conduct a written test for determining the merit of the

candidates to replace the academic merit and the merit secured in such written test has been decided to be considered for admitting the candidates

in viva-voce. Thus, it is clear that the respondent-Board in the impugned notifications has not taken into consideration the observations made by

the Court in the aforesaid writ petition while recasting the criteria.

13. Further, SWP No. 586/2011 challenging the criteria for the post of Accounts Assistant came to be filed in the Srinagar Wing of this Court

after the issuance of provisional select list of Accounts Assistant. It is a settled law that once the selection process has started, the rules for

selection cannot be changed. Whereas, in the present case, even the provisional select list had already been issued when the respondent-Board

decided to change the revised the criteria, thereby requiring the selected candidates to again go through the selection process on the plea that the

revised criteria was as per the direction of the Court. The respondent-Board completely distorted the observations of the Court so as to foist their

own criteria for the reasons best known to them, whereas the intent of the Court was altogether different. The revised criteria are not in

consonance with the judgment passed by the Court in the aforesaid writ petition.

14. The Apex Court in *K. Manjusree Vs. State of A.P. and Another*, has held that once the entire selection process was completed, introduction

of requirement of minimum marks for interview would amount to changing the rules of the game after the game was played which is clearly

impermissible. It would be appropriate reproduce the relevant part of the judgment hereunder.

27. But what could not have been done was the second change, by introduction

of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier resolutions dated 24.7,2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them - P.K. Ramachandra Iyer v. Union of India, Umesh Chandra Shukla v. Union of India and Durgacharan Misra v. State of Orissa.

15. The Apex Court has further held:

32. In Maharashtra SRTC v. Rajendra Bhimrao Mandve this Court observed that ""the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced."" In this case the position is much more serious. Here, not only the rules of the game were changed, but they were changed after the game has been played and the results of the game were being awaited. That is unacceptable and impermissible.

In view of the above discussion and ruling of the Apex Court, I deem it proper to allow the writ petitions. Accordingly, the writ petitioners are

allowed. Notice No. SSB/Set/Say/12/2337-43 dated 06.09.2012 and Corrigendum No. SSB/Sel/Secy/012/2576-80 dated 20.09.2012 are

hereby quashed except to the extent of B.Ed. Degree. Respondent-Board is directed to go ahead with the selection process for selection of

candidates for the post of Accounts Assistant in pursuance of Advertisement Notice No. 07 of 2010 dated 12.11.2010 and complete the same

within a period of one month from the date a copy of this judgment is served upon it Connected CMAs, accordingly, stand disposed of.