
(2020) 06 J&K CK 0079

In the Jammu And Kashmir High Court

Case No : SWP No. 623 Of 2015, IA No. 01, 740 Of 2015,

Nittu Sudan

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 24-06-2020

Acts Referred:

Citation : (2020) 06 J&K CK 0079

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Ashish Sharma, Amit Gupta, S.H.Rather

Judgement

Sanjeev Kumar, J

1. The Jammu and Kashmir Service Selection Board-respondent No.2 vide Advertisement Notification No.05 of 2013 dated 02.03.2013 invited applications for filling up various posts of Teachers in the School Education Department, which included 157 posts in District Cadre Poonch. The breakup of the posts indicated in the Notification was as under:

Open merit : 90

RBA : 31

SC : 13

ST : 15

ALC : 05

OSC : 03

Total : 157

2. While the selection process pursuant to the aforesaid Notification was pending and had not proceeded beyond the receipt of application forms, respondent No.2 issued another Notification, i.e., Advertisement Notification No.06 of 2013 dated

10.05.2013 inviting applications inter alia for 231 more posts of Teachers in District Cadre Poonch with the breakup as under:-

Open merit : 133

RBA : 46

SC : 18

ST : 23

ALC : 07

OSC : 04

Total : 231

3. The petitioner, as he claims, responded to both the Advertisement Notifications and submitted her application forms to respondent No.2 against proper receipts/acknowledgements. The respondent No.2 conducted common selection process for the posts notified vide aforesaid two Notifications. However, the candidates were separately shortlisted with reference to each Notification. Indisputably, the petitioner was shortlisted only with regard to the first Notification, i.e., Notification No. 05 of 2013 and was not amongst the candidates shortlisted in reference to Advertisement Notification No.06 of 2013. The petitioner could not make grade because of her lower merit vis-à-vis the candidate last selected in the selection process carried out pursuant to the Advertisement Notification No.05 of 2013. The petitioner, as she claims, was placed in the waiting list of the open merit category candidate at S.No.5 against the Notification No.05 of 2013. The petitioner was indicated to have obtained total selection merit of 59.5169 points, which included the points in the written test, viva voce and academic merit. The petitioner after comparing her merit indicated in the waiting list (open merit) under the Advertisement Notification No.05 of 2013 found that the petitioner because of her merit in the written/screening test was entitled to be shortlisted even with reference to Advertisement Notification No. 06 of 2013, but, had not been so shortlisted by the respondents arbitrarily. The petitioner made representation to the respondent No.2 to look into the matter. The representation was made on 09.07.2014 and when no decision on the representation was taken by the respondents, the petitioner filed the instant petition.

4. The respondent No.2 along with other respondents were put on notice vide order dated 02.03.2015 and they were directed to keep one post of Teacher District Cadre Poonch reserved with reference to Advertisement Notification No.06 of 2013. The respondent No.2 caused appearance in the matter on 23.07.2015, but, despite availing of numerous opportunities, no response has been filed. This Court while hearing this petition on 04.10.2016, directed respondent No.2-Board to file a specific affidavit to indicate the following:-

(i) Whether a common selection process was adopted for Advertisement

Notification No.05 of 2013 and 06 of 2013;

(ii) Whether the merit secured by the candidates, who had applied for consideration under both the aforesaid two Notifications, was common or separate; and

(iii) The details of the criteria adopted by the Service Selection Board for making selection for Notification No.05 of 2013 and Notification No. 06 of 2013.

5. In compliance to the aforesaid order, Dr. Rehana Akhtar Bijli, the then Administrator Officer of respondent No.2, filed her affidavit stating therein that for both the Notifications, one common test was conducted, but, shortlisting of the candidates was done notification-wise/item-wise on the basis of the cut-off marks secured by the candidates in each of the Notification. The petitioner was shortlisted for one Notification only, i.e., 05 of 2013 on the basis of her merit and, therefore, was not considered for another Notification, i.e., 06 of 2013. With regard to the query of the Court pertaining to the selection criteria adopted in the selection, the deponent indicated in detail the approved selection criteria adopted in the selection of Teachers in reference to both the Advertisement Notifications. The criteria indicated in the notifications reads thus:-

i) Marks obtained in the written test out of 180 to be proportionately converted into points : 65 points (on pro rata basis.

ii) Graduation : 02 points

iii) ETT/NTT : 01 points

iv) P.G. : 02 points

v) B.Ed. : 03 points

vi) M.Ed. : 03 points

vii) M.Phil : 02 points

viii) Ph.D after M.Phil : 04 points

OR

ix) Ph.D (Direct without M.Phil) : 04 points

x) Viva voce : 20 points

Total : 100 points

6. It was also clarified in the affidavit that a candidate, who had applied and qualified in more than one Notification, he/she was shortlisted for both the Notifications. In a nutshell, the respondent No.2 in his affidavit took the stand that the petitioner in view of her merit in the written test was shortlisted only in reference to Notification No.05 of 2013 and not with reference to Notification No.06 of 2013, as such, he was only interviewed for the post notified vide

Notification No.05 of 2013 where, because of her lower merit vis-à-vis the merit of the candidate last selected in the open merit, she could not make it to the select list.

7. In the light of the aforesaid affidavit filed by respondent No.2, the matter came up for consideration before the Court again on 25.10.2018 and this Court taking note of the stand of the respondent- board that they had not received any application form with reference to Advertisement Notification No. 06 of 2013, this Court directed the respondent No.2 to file yet another affidavit to disclose as to who had submitted the application form No.539565, which is the number indicated in the receipt issued by respondent No.2 acknowledging receipt of form from the petitioner with reference to Advertisement Notification No. 06 of 2013. In compliance, Dr.Vikas Dhar Bharti, the then Administrator Officer, filed his affidavit on 25.10.2018, perusal whereof indicates that the respondent No.2 could not give satisfactory reply and only submitted that as per the physical verification of the records of Divisional Office Board, Jammu they could only find one application form of the petitioner. The specific query of the Court to find out the person who had submitted the application form No. 539565 remained unanswered.

8. Be that as it may, the respondents have not been able to say emphatically that they had not received the application form from the petitioner in response to Advertisement Notice No.06 of 2013. This petition is opposed by the private respondent as well who figures at S.No.101 in the array of respondents. It is submitted that because of the interim order reserving one post of Teacher, respondent No.101 who is the last candidate to be appointed in the open merit/waiting list has not been appointed.

9. Within the constraints of the pleadings of the parties, particularly, the respondent No.2 and having regard to the fact that this petition is pending since 2015, learned counsel appearing for the parties were persuaded to address their arguments.

10. Having heard learned counsel for the parties and perused the record, I am of the view that given the stance taken by the respondent No.2 to defend this petition, this Court has no option, but, to believe the petitioner that he had submitted two separate application forms in response to the Advertisement Notification No.05 of 2013 and Notification No. 06 of 2013. The petitioner has placed on record copy of the acknowledgement slip issued by the respondent No.2, original whereof was shown to the Court during hearing of the matter. The acknowledgement slip is purportedly issued by the respondent No.2 and bears number and the date of the Notification, name of the applicant and specific serial number. The respondent No.2 has not been able to specifically deny the aforesaid acknowledgement slip having been issued by the respondent No.2. The plea of the respondent No.2, however, is that as per verification made by them, they could find only one application form of the petitioner, which was submitted by her in reference to Advertisement Notification 05 of 2013. It is not in dispute and is

rather categorically admitted by the respondent No.2 in its affidavit filed through Mrs. Rehana Akhtar Bijli, the then Administrator Officer, that the selection process for both Notifications was common. The petitioner was shortlisted for interview under Notification 05 of 2013 and she, however, could not make it to the select list because of her inferior merit vis-à-vis the candidate last selected in the open merit. The merit points obtained by the petitioner in the selection process 59.5169 are also not disputed. The total merit points of the petitioner in the selection made pursuant to the Advertisement Notification No. 05 of 2013, i.e., 59.5169 includes 07 points awarded to the petitioner for her academic qualification.

11. It is not forthcoming from the pleadings and in the absence of record, it is difficult to ascertain the cut off merit for short-listing in reference to Advertisement Notification No. 06/2013. Despite repeated requests and reminders to Mr. Gupta, learned counsel for the respondent-Board, the record of short-listing with reference to Notification No. 06/2013 was not produced.

12. After having waited for almost three months, I have been left with no option, but to dispose of this petition by providing as under:

(i) Respondent No.2 shall ascertain the cut off merit for short-listing prepared with reference to Notification No.06/2013.

(ii) If respondent No.2 finds that the short-listing merit of the petitioner with reference to Notification No. 05/2013 is equal to or higher than the merit of the candidate last shortlisted in reference to Advertisement Notification No.06/2013, it will determine the merit of the petitioner in terms of the common selection criteria adopted for both the selections.

(iii) In case it is found that the merit of the petitioner with reference to Advertisement Notification No. 06/2013 is higher than the merit of the candidate last selected pursuant to aforesaid Notification, the name of the petitioner shall be forwarded to respondent No.1 for appointment.

(iv) The appointment, to be offered to the petitioner, shall be against the vacancy reserved vide interim order dated 02.03.2015 passed in this petition.

(v) The petitioner, if found, entitled to selection in reference to Advertisement Notification No. 06/2013 shall be appointed retrospectively with effect from the date the candidates selected pursuant to the Notification No. 06/2013 were appointed.

(vi) The retrospective appointment of the petitioner shall be notional in nature and would qualify for pecuniary and other benefits prospectively with effect from the date of issuance of appointment order.

13.The aforesaid exercise shall be conducted by the Service Selection Board within a period of two months from the date copy of this order is made available to it.