

(2011) 10 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 3 of 2010

Pawan Kumar and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 20-10-2011

Acts Referred:

Citation : (2011) 4 JKJ 38

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohammad Yaqoob Mir, Judge

1. Quashment of selection and appointment of respondents No. 10 to 242 as Dental Surgeons in Health and Medical Education Department is

sought on various grounds as incorporated in the memo of petition SWP No. 3/2010. Similarly relief in the connected writ petitions i.e., SWP No.

1276/2010 SWP No. 367/2010, SWP No. 617/2010 & SWP No. 1486/2010 has been sought.

2. Vide advertisement notice No. 02/PSC of 2008 dated 18th of February' 2008, applications on a prescribed form were invited for the posts of

Dental Surgeons, category wise with the following breakup:-

O.M. RBA SC ST ALC SLC PHC Total

183 64 64 32 10 06 00 321

In total 923 aspirants applied as against the said 321 posts and all were called for interview.

3. The interview process culminated in finalization of the selection List wherein the writ petitioners did not find place as having failed to make the

grade, hence the petitions.

4. Vide Order dated 6th of August' 2010, it was observed that all the connected petitions deserve to be disposed of at an earliest. Respondents

were directed to file their pleadings so that an effort is made to dispose of all the writ petitions at pre-admission stage. Thus, respondents have filed

their objections and in addition some of the respondents have filed the affidavits. Furthermore, some of the selected candidates have also moved an

application for being permitted to intervene.

5. It is in the aforesaid background, with the consensus of the learned counsel for the parties, the petitions are formally admitted to hearing, so are taken up for final disposal.

6. The writ petitioners in essence have prayed for quashing the select list of private respondents No. 10 to 242 dated 10th of December' 2009 and

have also sought quashment of the Government Order No. 584-HME of 2009 dated 30th of December' 2009 sanctioning the appointments in

favour of the said respondents. The petitioners claim that they were more meritorious but have been ignored.

7. Learned Counsel appearing for the writ petitioners while seeking quashment of selection and appointment of respondents No. 10 to 242,

projected various grounds, which are taken up for consideration one by one.

(a) Writ petitioners have claimed that they were meritorious having obtained 61 percent of marks in their Bachelor in Dental Surgery (for short

B.D.S) Degree. As compared to them, the various selected candidates, inferior in merit in B.D.S Degree, have been selected and appointed. The

manner and method of selection as adopted by the J&K Public Service Commission (Business & Procedure) Rules, 1980. The said Rules has

been re-casted vide Notification No. 164-PSC of 2004 dated 25th of October 2004, same is reproduced herein:-

JAMMU AND KASHMIR PUBLIC SERVICE COMMISSION, SRINAGAR

NOTIFICATION NO: 164-PSC OF 2004

DATED: 25-10-2004

In supersession of all earlier notifications, the Jammu and Kashmir Public Service Commission hereby recasts Rule 51 of the Jammu and Kashmir

Public Service Commission (Business & Procedure) Rules 1980, as under namely:-

51. The assessment at a selection which is solely by means of an interview shall be based on the following principles:-

A. Performance of the candidates in viva-voce 50 Marks

Tests

B. Academic Merit

(i) Percentage of marks obtained in the degree 30 Marks

(i.e. minimum) qualifications prescribed for the posts

(ii) where Bachelors degree is prescribed as minimum qualification:-

(a) One year Post graduate Diploma/Equivalent 01 Mark in the concerned subject

(b) Two year Post graduate Diploma/Equivalent 02 Marks in the concerned subject

(c) Post graduate degree in the concerned 03 Marks subject e.g

M.A/M.Sc/M.Tech/MD/M.S/M.Phil/Equivalent

(d) Ph.D/D.M/Equivalent in the concerned 05 Marks subject

Where a Masters Degree is prescribed as minimum qualification

(a) One year Post graduate Diploma/Equivalent 01 Mark in the concerned subject

(b) Two years post graduate 02 Marks Diploma/Equivalent in the concerned subject

(c) M.Phil/Equivalent 03 Marks

(d) Ph.D/D.M/Equivalent 05 Marks

Note: Marks awarded shall be only for the highest degree obtained.

Where Ph. D degree is prescribed as the minimum qualification

For Post-Doctoral Degree/Fellowship up to 05 Marks

minimum of

C. Experience acquired by the candidate in the 05 Marks

concerned Specialty/sub-specialty,

subject/discipline

For every full year beyond eligibility requirements 01 mark subject to maximum of 05 marks.

D. i Sports/Games Distinction in Sports/Games (i.e representing a University, State or Region in Any regional or national Sport/Games) up to 03 Marks

ii Distinction in NCC activities (i.e, having held 02 Marks the rank of Junior Under Officer or Senior or Under Office or having passed the top grade certificate examination of NCC)

E. Special Attributes relatable to record

(to be identified) 05 Marks

* Till such attributes are indentified for any post or Category of posts, these marks shall be added to the Academic Merit.

TOTAL: 100 Marks

The record of the award sheet of the marks as produced by the Commission is suggestive of the fact that the marks have been awarded in

accordance with the Rules. It is further discernible from the records that for minimum qualification prescribed for the post, every candidate has

been awarded marks as per the rules. The petitioners after having actively participated in the selection process, after noticing their exclusion have

projected that they faired well in the interview but were not selected. It is trite that the courts cannot substitute its opinion as against the opinion of

the expert Selection Committee. The expert Selection Committee has awarded the marks in the viva-voce as well as for the qualification, same

cannot be doubted unless some mala fide/bias is attributed to the Selection Committee, which is not forthcoming as shall be further clear on

determination of the other grounds as projected.

(b) It is contended in the petition that three candidates namely Iqbal Singh, J.P. Singh and Rubinder Kour relatives of Dr. Tara Singh, Member

J&K Public Service Commission and two other candidates namely Nusrat Rehman S/o. G.N. Malik R/o. Tral and Shagufta Shireen D/o Gh.

Hassan beigh R/o. Tral being very close to Dr. Tara Singh have been Selected. In addition one Phool Jan who is a clinical Assistant of Dr. Tara

Singh has also been selected.

The respondent-Commission has specifically denied to have showered any favour, whereas private respondents, who have filed detailed reply, in

their reply have refuted the allegations by stating that Dr. Tara Singh, Member J&K Public Service Commission, was neither the Member of the

Selection Committee, who conducted the interview and made the selection nor Dr. Tara Singh participated in the process so had no role to play.

In addition, it is stated that Shri J.P Singh, nephew of Dr. Tara Singh has not been selected, Ms. Rubinder Kour, niece of Dr. Tara Singh has been

selected on the basis of merit. Mr. Nusrat Rehman and Ms. Shagufta Shireen as named above, have got no proximity with Dr. Tara Singh. Dr.

Tara Singh has no proximity with Ms. Phool Jan, clinical Assistant. That apart, it is stated that Dr. Tara Singh was not in any way remotely

connected with the selection process. The position as stated has not been controverted by the petitioners. Therefore, in the said backdrop i.e.,

when Dr. Tara Singh had no connection with the selection process, simply being a Member of the J&K Public Service Commission, is not enough

to attribute motive unless there is some substantial basis. Relatives of the Member of the Public Service Commission could not be disqualified on

such basis in competing for the posts advertised. In case Dr. Tara Singh would have been the Member of the Selection Committee, then it was for

Dr. Tara Singh to withdraw from the Committee on noticing his relatives being participants, but the record would indicate that the Committee for

selection of Dental Surgeons, as constituted by the Public Service Commission, comprised of Dr. N.A. Jan Chairman and R.L. Bharti, Member of

Public Service Commission and one Dr. Mubeena, who had come from National Dental College, Bangalore as an expert, so clearly Dr. Tara

Singh had no roll play in the selection process. Therefore, the allegations of mala fide are without basis.

(c) It is next contended that two candidates namely Saleema Jan S/o. Mohammad Mubarak Shan R/o Kaloosa Bandipora and Salma Yaseen D/o.

Mohammad Yaseen, R/o. Ex-resident of Bandipora are closed relatives of Dr. N.A. Jan, who was the Chairman of the Selection Committee. In

addition there was complaints against Dr. N.A. Jan for taking bribe from candidates namely M.s. Rubina Rashid D/o. Dr. Abdul Rashid R/o.

Aanchiora, Anantnag, Ms. Rozy Bashir, D/o, Bashir Ahmed Haqani, R/o. Aanchidora Anantnag and Ahsan-ul-Haq S/o. Mohammad Amin Wani,

R/o. Ashajipora Anantnag. In reply filed by the private respondents, it is in categorical terms stated that respondent No. 54 Salma Yaseen and 58

Saleema Jan are not related to Dr. N.A. Jan, so is a false allegation Dr. N.A. Jan, who has filed an affidavit has also deposed therein that he has no

close relationship with the said candidates namely Ms. Salma Yaseen and Saleema Jan.

It is also stoutly refuted by the private respondent in their reply that allegations leveled about bribe are totally frivolous and unfortunate. Dr. N.A.

Jan, (respondent No. 7) in his affidavit has categorically denied to have indulged in any type of bribery. In addition, has added that he has rendered

distinguished service to the State in various capacities with honesty and dedication, without any basis attempt has been made to defame him.

Candidates namely Ahsan-ul-Haq, Nusrat Rehman, Saleema Jan and Salma Yaseen have filed their individual separate affidavits wherein allegation

as made against Dr. N.A. Jan relatable to them have been categorically refuted. Nothing in opposition to the same has been brought on records by

the petitioner nor is anything in that direction discernable from the records as has been produced.

While considering the allegation and the reply filed nothing has been produced on record in support of the allegations. Therefore, such allegations

which do not get any support from the records are required to be termed to be imaginary and ignored as such. It appears that the writ petitioners

on finding their exclusion from the selection have attempted to fire from all cylinders so as to console themselves as against the position of their

exclusion in the select list, which in any case is not appreciable. No doubt, in case there would have been any solid base or circumstantial evidence

same could be well appreciated. In absence of any solid material and base, it does not befit to the position of the aspirants to malign the image of

any person. After all, it is not possible that all competing candidates can be selected. In the process of selection some of the candidates get

excluded and the candidates higher in overall merit find place in the select list.

(d) In the petition it is next pleaded that one candidate namely Nilofar Jan, being adopted daughter; Sumaira Sabha-niece; Farzana Mehraj, D/o. of

brother in law Jahanzeb son in law of the Education Minister Mr. Peerzada Mohd. Sayeed, one Mohd. Abrar Bhat S/o. Ghulam Mohammad

Bhat, R/o. Pampore-son in law of the said Minister's brother and then one Peerzada Farhat, S/o. Peer Ghulam Mohammad R/o. Damhar,

Anantnag-nephew of the said Minister, Again one Rayeesa Tabasum D/o. Peer Hassum Din R/o. Damhal, Anantnag-niece and Nazima Ashraf

D/o. Mohammad Ashraf Trumboo, R/o Rajah, Srinagar, daughter in law of the said Minister have been selected only because they are close

relatives of the said Minister. Private respondents in their detailed reply have in clear terms stated that selection has been made by the J&K Public

Service Commission and the Government has no role to play in the selection process. It is also stated that it is incorrect that Nilofar Jan is adopted

daughter of the Education Minister. Nazima Ashraf is also not related to the Minister, Mohammad Abrar Bhat is not the son-in-law of the brother

of the said Minister. Rayeesa Tabassum alleged to be relation of the Minister belong to R.B.A category and in that category many posts could not

be filled up due to non availability of the candidates. Peerzada Farhat has also been selected under the R.B.A category.

While considering the allegations as made and the reply as tendered, what emerges is that the petitioners have not been able to justify the said

allegations nor they have been able to show as to whether there was any intervention in the selection process because the J&K Public Service

Commission is an independent body. The Committee which conducted the selection process is not in any way shown to have been influenced by

the said Minister. If the relatives of the Minister compete in the competition and on merit get selected, is that a sin. From the records it does not

appear that any favour has been showered on any of the said candidates. Position of Ms. Nilofar Jan not being adopted daughter of the said

Minister has not been refuted.

(e) It has been projected that from reliable sources, it has surfaced that one

member of the Selection Committee, namely Sh. R.L. Bharti has not signed the select list, so the select list was bad and consequent approval of the said select list by the Government is also bad in the eyes of law. The respondent-Public Service Commission in their reply have explained the manner and method of the entire selection process and in this context have stated in the reply that the Selection list is signed by one of the members of the Selection Commission as well as the expert, same was considered by the Full Commission and the Full Commission after due deliberations, in which the other member namely Sh. R.L. Bharti also participated took the decision to release the select list. The award sheet has been prepared which in clear terms show as to how the marks have been allocated for educational qualification, higher qualification, experience, NCC, sports activities and also contains marks of viva-voce and the subject attributes. The selection record as has been produced by the Commission in the shape of Photostat copies, is also suggestive of the fact that the Committee for Selection of Dental Surgeons constituted by the Commission comprised of Dr. N.A. Jan, Sh. R.L. Bharti (Members of the Commission) and Dr. Mubeena (expert) Professor, Government Dental College and Research Institute, Bangalore. From the records, it is clear that basically it is the said expert who has awarded the marks for viva-voce to all the candidates and the same position has been agreed to by the Chairman of the Committee. Dr. N.A. Jan by reflecting the same marks position in the final award list, wherein the marks for minimum qualification, higher qualification, experience, sports, NCC, subject attributes and viva-voce have been reflected. Since Sh. R.L. Bharti had not signed the final award sheet, the matter had been taken up in the extraordinary meeting of the Commission on 15th of December' 2009 wherein decision has been taken for release of the select list and to such decision the said member Sh. R.L. Bharti is the signatory. Then again one more meeting was held on 19th of December' 2009, in which after due deliberations final decision had been taken for release of the select list. All the members of the Commission had signed the list to which Sh. R. L. Bharti is also a signatory. Therefore, in the given circumstances to say that Sh. R. L. Bharti had not signed the final award pales into insignificance. Even otherwise, from the records, it is not

forthcoming that Mr. Bharti had objected to the awarding of marks by Dr. Mubeena, expert. Therefore, the submission as made by the petitioners in this direction is insignificant and irrelevant.

(f) Next it has been contended that one Khalida Akhtar has been selected under category Handicapped when she does not belong to the said category. In addition, some candidates have been selected who did not appear in the interview. Petitioners have not been able to cite name of any candidate who had not appeared in the interview but was selected, so this allegation remains to be substantiated, furthermore it is stated that some of the candidates who figured in the open merit category were physically handicapped, but were selected on the basis of their merit and not on horizontal reservation. The contention in view of the said circumstances is only to be rejected.

(e)-(g) It is projected that under Rule 51 of the Rules, 50 marks were allocated for viva-voce, which is contrary to the law laid down by the Hon'ble Supreme Court. Respondents have awarded 50 out of 50 marks to some of the candidates on viva-voce, it is true that earlier Rule 51 was questioned because as per the earlier Rule, 100 marks were allocated for performance of a candidate in viva-voce, same rule was struck down by the Full Bench of this Court in Dr. Inder Parkash Gupta v. State of J&K & Ors., 2010 (5) J&K SC-348 in SWP No. 211/94. It is in view of the same position, the Rule had been re-casted on 25th of October' 2004. The validity of the said re-casted Rule has not been challenged. In the absence of any challenge to the Rule, that too when the petitioners competed for the posts of Dental Surgeons on the basis of the criterion contained in the said Rule 51, now after failing to make the grade, to claim that the Rule is invalid, is impermissible. Furthermore, it is to be made clear that the perusal of the award sheet, more particularly, the marks awarded by the expert, none of the candidate has been awarded 50 out of 50 marks. The award sheet, as prepared by the expert does not suffer from any bias or arbitrariness. The expert Dr. Mubeena, from Bangalore, on proper analysis and interview of the candidates has awarded the marks out of 50, to which each candidate was entitled to, same is not open to question when no mala fides are attributed to the expert. So, this contention of the petitioners also fails.

(h) Next it is contended that one Asif Afzal is relative of ex-Minister's Daughter-in-law. If it be so, whether the ex-Minister had any say or access

to the Selection Commission is neither alleged nor is forthcoming from the records. The position of such allegations got further exposed by the fact

i.e., the petitioners have alleged that one Isha Mahajan D/o. Suresh Gupta is Daughter-in law of Mr. K.B. Jandial, member of Public Service

Commission. It is made clear by the Private respondents in their reply that the selection process for the post of Dental Surgeon, was concluded in

the month of February 2009. Mr. K.B. Jandial became member of the Public Service Commission in the month of November' 2009, when Dr.

N.A. Jan had already retired. It by itself shows as to how the allegations are baseless. It is further alleged that one Manmeet Kour is related to ex-

Private Secretary to Health Minister. What type of allegation it is, how the ex-Private Secretary to the Health Minister can have access to the

Member of the Selection Committee, has not been explained.

Then again one Tehseen Madni is daughter of Deputy Speaker of J&K Assembly, who has been selected under R.B.A category and in this

category various posts are still vacant due to non availability of the candidates. So, there was no question of favoritism.

The respondent-Public Service Commission has in categorical terms clarified as to how the posts with the breakup of the categories were

advertised. Finally select list was released with the following breakup:-

O.M. R.B.A S.C. S.T. A.L.C. S.L.C.

160 55 09 03 04 03

i.e., selection of 243 candidates was notified. In addition selection of 19 candidates was with-held for want of verification. Further cases of 15

candidates, who figured in the selection list, were referred to the Government for clarification with regard to eligibility vis-à-vis age, as they were

working on ad hoc basis. The matter was clarified by the Government vide its order No. 524-HME of 2009 dated 07th of December' 2009. In

pursuance thereof it was made clear that adhoc employees are not entitled to the benefit of higher age as applicable to the in-service candidates. It

is further made clear that under reserved categories i.e., under the R.B.A.=04, SC =16, ST=28 and ALI=06 total 54 posts remained unfilled for

want of availability of the suitable candidates. In the reply, reference has been

made to various judgments so as to show that the experts have technical experience Courts have to be slow to interfere with the opinion expressed by the experts unless allegations of mala fide are made and established. Again reference is made to the judgment titled Dalpat Apasaheb Soulanke v. B.S. Mahajan, reported in AIR 1990 SC 435, so as to show that the Courts cannot hear appeals against the decision of the Selection Committee. Then again reference is made to the judgment rendered by the Hon'ble Apex Court in case DDA & Ore v. UEE Electricals Engg (P) Ltd., & Ore., reported in 2004 (3) Supreme 429, wherein it has been held

It cannot be over looked that the burden of establishing malafides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility.

8. In the totality of the circumstances what emerges is that the challenge thrown to the selection and appointment of the respondents No. 2 to 242

is without any merit. All the Petitions, accordingly being devoid of any merit, are dismissed along with all connected CMPs. However, no orders as to costs.

9. The record, as produced by the Public Service Commission in the shape of Photostat copies, in a sealed cover after perusal is re-sealed and be returned back to the learned counsel Mr. Natnoo against proper receipt.