

(2018) 10 J&K CK 0081

In the Jammu And Kashmir High Court

Case No : Letter Patent Appeal No. 2 Of 2017, IA No. 01 Of 2017

Pawan Kumar @APPELLANT@Hash State And Ors

Date of Decision : 25-10-2018

Acts Referred:

Jammu And Kashmir Subordinate Services Recruitment Rules, 1992 — Rule 13(i), 13(ii), 14

Citation : (2018) 10 J&K CK 0081

Hon'ble Judges : Dhiraj Singh Thakur, J;Sindhu Sharma, J

Bench : Division Bench

Advocate : Rahul Pant, H A Siddiqui, Amit Gupta

Final Decision : Disposed Off

Judgement

1. Present Letters Patent Appeal has been preferred against the judgment and order dated 17.11.2016 passed in SWP No.2427/2011. Briefly stated the material facts as under.

2. The Jammu and Kashmir Service Selection Board issued an advertisement notice No.3 of 2006 dated 28.12.2006, inter alia, inviting applications from eligible candidates for the post of Dental Assistants for District Cadre Rajouri, Doda and Poonch. Both the appellant and the respondent No.3 applied under the Scheduled Caste category. Whereas the appellant applied in his home District Rajouri, respondent No.3 applied in three districts i.e. Poonch, Rajouri and Doda. It is pertinent to mention that the home district of respondent No.3 is Doda.

3. Respondent No.3 came to be selected as Dental Assistant for District Rajouri. The appellant, however, could not make up the merit for District Rajouri, inasmuch as, the respondent No.3 stood at Serial No.1 in merit panel and the appellant at Serial No.2. In the background of the aforementioned facts, the appellant filed a writ petition before the Writ Court and invoked the provisions of the Jammu and Kashmir Sub-ordinate Services Recruitment Rules, 1992 as amended vide SRO 343 dated 13.10.2004. Rule 13(ii) post amendment envisaged thus:

"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."

4. It is pertinent also to point out that spirit of the amended Rule reproduced hereinabove was also incorporated as Clause (V) in the advertisement notice dated 28.12.2006, which is also reproduced hereinbelow:

V. APPLICATION FOR MORE THAN ONE POST / DISTRICT / DIVISIONAL CADRE

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

(b) A candidate can apply only in one District of his choice for District Cadre posts and in one Division of his choice in respect of Divisional Cadre posts advertised simultaneously. Provided that if any candidate applies for a post in more than one District or Division, his candidature shall be considered only for the District or Division in which he is ordinarily residing.

5. The case set up by the petitioner before the Writ Court was that since respondent No.3 had applied for appointment in more than one District, he should be considered for appointment in his home district in terms of the amended Rule and, therefore, sought a writ of Certiorari.

6. In the first round of litigation, the petition was dismissed by the Writ Court vide judgment and order dated 07.08.2012. The basis for dismissing the writ petition was on account of the Writ Court's reliance upon the judgment of the Apex Court in the case of Vinod Kumar Koul v. State of J&K and Ors, in Civil Appeal No.5217 of 2012 (Arising out of S.L.P. (C) No.30744 of 2010) decided on 16.07.2012. A review petition (Review SWP No.11/2012) came to be filed before the Writ Court against the judgment and order dated 07.8.2012, which was allowed by virtue of order dated 31.10.2012 and matter was posted for consideration afresh. What was stated by the Writ Court, while allowing the review petition, can beneficially be reproduced as under:

"The selection of respondent No.3, questioned by the petitioner in the Writ Petition, having been held pursuant to the statutory rules restricting consideration of candidates applying in more than one district, only against the vacancies available in the district to which they belonged would not, therefore, be governed by what was held in Vinod Kumar Koul's case. An error, therefore,

appears to have crept in the Judgment whereby the petitioner's Writ Petition was dismissed relying on the Supreme Court judgment which was not applicable to the facts of the case. The judgment delivered on petitioner's Writ Petition on 07.08.2012, therefore, needs to be reviewed."

7. After the review petition was allowed, the matter was re-considered by a different Bench and the writ petition was again dismissed vide order dated 17.11.2016 by placing reliance on the same judgment passed by the Apex Court in Vinod Kumar Koul's case (Supra). It is, in these circumstances, the present Letters Patent Appeal has been preferred questioning the said judgment and order impugned. Counsel for the appellant states that the Writ Court could not have dismissed the petition yet again especially after the Writ Court had earlier reviewed the judgment and order dated 31.10.2012 on the ground that Vinod Kumar Koul's case (Supra) was inapplicable to the facts and circumstances of the present case.

It was urged that the Writ Court had erroneously applied the facts of the Vinod Kumar Koul's case (Supra) to the controversy at hand. Reliance was also placed upon the stand taken by the Selection Board before the Writ Court, where it was stated that the reason for selection of respondent No.3 for District Rajouri was on account of his merit and also the fact that the respondent No.3 had nowhere reflected that his actual home district was Doda. In other words, it was thus urged that had it been made known to the Selection Board that the Home District of the respondent No.3 was Doda, they would have not selected respondent No.3 for District Rajouri at all.

8. Since a lot depends upon the Apex Court's judgment in Vinod Kumar Koul's case, it becomes necessary to notice the facts in the background of which the judgment had been pronounced.

9. In that case, an advertisement came to be published by the Selection Board for the post of Laboratory Assistant which was a District Cadre post for District Udhampur. The appellant applied for the same. The Selection Committee, however, did not interview the appellant on the ground that he was not a permanent resident of District Udhampur.

10. The genesis in allowing the appeal lay in Circular dated 20.05.1993 issued by the Board, which envisaged as under:

"Only un-ambiguous Permanent Residence Certificate issued by the competent Revenue Authorities of the District to which the posts belong should be accepted in respect of District Cadre posts. The PRC as having statements like presently living at should not be taken any cognizance of same will hold good for Divisional Cadre posts as well.

11. In regard to the Circular (supra), it was held that the same was only an administrative decision taken by the Board and was not part of the scheme of the Rules. What was stated in paragraphs 9 and 10 by the Apex Court was thus:

9. It is not in dispute that the post of Laboratory Assistant is a Subordinate Service post and is included in the District cadre for which recruitment is required to be made by the Board on the recommendations of the Selection Committee. In terms of Rule 13(i), the Board is required to club the vacancies of District cadre referred to it in a calendar year, advertise the same in one go and invite applications from the residents of Jammu and Kashmir without prescribing the conditions of domicile. In terms of clause (ii) of Rule 13, a candidate can apply only in one district for the District cadre posts and in one division for the Divisional cadre posts. If a candidate applies for more than one District or Division, then his candidature is required to be considered only for the district or the division in which he is ordinarily residing. In terms of Rule 14, the Board can, with the prior approval of the Government, frame regulations and lay down the procedure and method for carrying out its functions under the Rules.

10. There is nothing in the language of Rule 13(i) or any other Rule from which it can be inferred that for the District cadre post only a permanent resident of the particular district can apply. Rather, Rule 13(i) postulates inviting of applications from the permanent residents of Jammu and Kashmir and not any particular district. Only in terms of clause (ii) of Rule 13 the candidature of a person who applies for more than one district can be considered for the district in which he is ordinarily residing. In our view, in the absence of any statutory stipulation in that regard, it cannot be said that a candidate who is a permanent resident of the State of Jammu and Kashmir is not eligible to be considered for a District cadre post merely because he is not a permanent resident of the particular District for which the post has been advertised.

12. It, therefore, becomes clear that provisions of Rule 13(ii) were very much noticed by the Apex Court in the aforementioned judgment and the same were neither held to be bad nor were its vires doubted. In fact, the emphasis in the judgment was on the absence of there being any prohibition for a candidate to apply for a post in a district where he was not a permanent resident. It was thus held that if a person was a permanent resident of the State of Jammu and Kashmir, he could be considered eligible for any district cadre post in the absence of there being any statutory prohibition.

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.

14. In any case, even the Writ Court had in the earlier round of litigation reviewed its own order while allowing the review petition as it also felt satisfied that this was a case which was required to be reviewed as the judgment earlier relied upon by the Board was held not applicable to the facts and circumstances

of the case.

15. Mr. H A Siddiqui, learned Senior Additional Advocate General appearing for the State pointed out that the respondent No.3 was subsequently appointed as a Junior Dental Technician in District Doda vide order dated 20.05.2016, which is on record.

16. Having considered the matter in its entirety, more so, in view of the subsequent appointment of respondent No.3 in District Doda, we feel that the right of the appellant to seek appointment on account of his merit in District Rajouri could not have been denied to him. We, accordingly, allow the appeal, set-aside the judgment and order impugned and direct the Selection Board to formally recommend the name of the appellant to the Government within a period of two weeks from today. The Government shall pass orders thereupon within a period of three weeks thereafter. We are told that a post has since been reserved by this Court vide order dated 01.02.2017, therefore, in our opinion, the Government would have no difficulty to adjust the appellant against the said post. We also hold that the appellant would be entitled to all consequential benefits and seniority etc on notional basis. The order of appointment would have effect from the date other candidates were appointed in the said District.

17. Disposed of, accordingly, along with connected IA.