

(2014) 06 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : LPA No. 152 of 2013 and CMP No. 236 of 2013 and 34 of 2014

Rafiq Baba

APPELLANT

Vs

State of JandK

RESPONDENT

Date of Decision : 09-06-2014

Acts Referred:

Citation : (2014) 3 JKJ 320

Hon'ble Judges : M.M. Kumar, C.J; Muzaffar Hussain Attar, J

Bench : Division Bench

Advocate : Arshid Andrabi, Advocate for the Appellant; S.A. Naik, AAG and S.A. Makroo, ASGI, Advocate for the Respondent

Judgement

Muzaffar Hussain Attar, J.—In SWP No. 728/2011, the appellant sought following reliefs:-

....a. Mandamus directing the respondents to maintain the candidature of the petitioner on the basis of his merit and not to operate reservation

quota in contravention of the rules.

b. Certiorari for quashing the impugned selection list showing the selection of Respondent No. 4 as selected instead of the petitioner.

c. Mandamus commanding the respondents to produce the records in the court of law for the perusal of the case history and background of taking

the illegal and mala fide action in an arbitrary manner....

The appellant/writ petitioner responded to the Advertisement Notice which was published in daily Newspaper in its edition dated 9th March, 2010

and sought consideration for being selected and appointed on the post of Boat Keeper. The appellant/writ petitioner being not selected and

appointed on the said post filed writ petition in which he sought the reliefs which

are reproduced hereinabove.

2. After consideration of the writ petition and hearing the learned counsel for the parties, the learned Writ Court, vide its Order and Judgment

dated 26th July, 2013, dismissed the writ petition. It is this order and judgment which is called in question in this Letters Patent Appeal.

3. Mr. Arshid Andrabi, learned counsel for the appellant, vehemently argued that in the Advertisement Notice, it has been mentioned that the posts

notified are district cadre posts and only those candidates who belong to the concerned districts shall apply. Learned counsel submitted that

respondent No. 4 is not resident of district Srinagar in which two posts of Boat Keepers were notified, but belongs to District Pulwama. Learned

counsel submitted that in view of this fact situation, the selection and appointment of respondent No. 4 on the post of Boat Keeper is illegal and

deserves to be set-aside. Learned counsel invited the attention of the Court to the Selection List which has been published in daily Newspaper in

its edition dated 4th April, 2011 in which the respondent No. 4 has been shown to have been selected as Boat Keeper, as RBA category

candidate, whereas the appellant figures at Serial No. 2 of the Waiting List as an open merit category candidate. Learned counsel submitted that

on the basis of merit secured by the appellant, he should have been selected for being appointed on the post of Boat Keeper instead of respondent

No. 4. Learned counsel also submitted that in view of the stand taken by the official respondents before the learned Writ Court the selection

criteria has been changed during the selection process and the post which was earlier notified to be district cadre post, has been considered as

divisional cadre post. Learned counsel submitted that the official respondents, in law, could not change the norms of selection after the initiation of

selection process. Learned counsel further submitted that all the selected candidates have been impleaded as party-respondents in this Letters

patent Appeal and they have also filed their objections. Learned counsel accordingly prayed for allowing of the Appeal and setting-aside the

impugned Judgment.

4. Learned counsel for the respondents submitted that the expression ""District"" in NCC is a combination of more than one Districts. Learned

counsel submitted that by referring to district in the Advertisement Notice, it

would not mean that the zone of consideration is restricted to only one district. Learned counsel submitted that in the scheme of NCC, a cluster of revenue districts would constitute one single unit. Learned counsel also submitted that the Appeal is not maintainable as the appellant/writ petitioner sought consideration for being selected and appointed on the post of Boat Keeper as an open merit category candidate but has thrown challenge to the selection of a reserved category candidate which is not permissible in law. Learned counsel also produced the record to indicate that the selected candidate has secured higher marks in the written test in comparison to the appellant. Learned counsel, accordingly, prayed for dismissal of the Appeal.

5. A writ of Certiorari is a writ of record. This writ is being issued to correct the record. It is settled legal position that a person aggrieved, in law, alone can throw challenge to an action/order of the Authority. In the facts of this case, before considering the issues, raised at bar, it becomes necessary to ascertain as to whether the appellant/writ petitioner can be said to be an aggrieved person in law. In the admitted fact position of the case, the appellant/writ petitioner has sought quashment of selection of respondent No. 4 to the post of Boat keeper. The appellant/writ petitioner of his own showing sought consideration for being selected and appointed on the post of Boat Keeper as an open merit category candidate, whereas the respondent No. 4 has been selected as a reserved (RBA) category candidate. The open merit category candidate constitutes a class in itself and the reserved category candidate constitutes a class apart. In the selection process, an open merit category competes with other open merit category candidates, whereas a reserved category candidate competes with the candidates of the category to which he belongs. In the selection process, open merit category candidate is not and cannot compete with the reserved category candidate as they constitute two different and distinct classes in law. The appellant/writ petitioner could challenge the selection of a candidate belonging to open merit category. The appellant though has pleaded against the candidate selected in the open merit category but has neither made him as party-respondent in the writ petition nor challenged his selection. The Court has to decide the appeal on the basis of pleadings and relief sought for. The Court in normal

situation cannot travel beyond the relief sought for in the writ petition.

6. In view of our above referred discussions, we hold that the appellant/writ petitioner is not an aggrieved person and, as such, is precluded from

challenging the selection of respondent No. 4 in the writ petition. The writ petition, in these circumstances, has been rightly dismissed by the learned

Writ Court. For the aforesaid reasons, this appeal being meritless, is, accordingly, dismissed along with CMPs.