

(2007) 10 J&K CK 0013
In the Jammu And Kashmir High Court

Raghubir Singh and Others	Vs	APPELLANT
State of Jammu & Kashmir and Others		RESPONDENT

Date of Decision : 16-10-2007

Acts Referred:

Citation : (2008) 2 JKJ 54

Hon'ble Judges : Yash Paul Nargotra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Y.P. Nargotra, J.—The basic question involved in this batch of writ petitions is, Whether the qualification of Adeeb-E-Kamil' acquired from

Jamia Urdu, Aligarh is equivalent to graduation for the purposes of employment under the Rehbar-e-Taleem Scheme in the State of Jammu &

Kashmir?

2. In the State of Jammu & Kashmir the Government introduced the Scheme called Rehbar-e-Taleem for the purposes of meeting the staff

deficiency existing in the schools located at difficult, inaccessible and far-flung areas, where the teachers posted from other places ordinarily would

not attend their duties regularly. The objectives sought to be achieved were;

(a) Promoting the decentralized management of elementary education with the community participation and involvement.

(b) To ensure accountability and responsiveness through a strong backup and supervision through the community.

(c) To operationalize effectively the schooling system at the grass roots level.

3. The scheme envisaged the engagement of Rehbar-e-Taleem guides/teachers locally. The eligibility prescribed was that the candidate should be a

permanent resident of the State. He or she should belong to the village where there is assessed deficiency of staff. On the certification of Village

Level Committee that no local candidate from within the village was available, a person from the adjoining village could be appointed. He or she

should possess the minimum qualification of 10+2 and should have as far as possible fulfilled the age qualification as prescribed by the State

Government. The due consideration was to be given to the Scheduled Castes and Scheduled Tribe candidates. Vide Order No. 1670-Edu of 2003

dated 24.11.2003 on finding that the objective sought out by the scheme stood accomplished, the Government stopped the process of filling up the

vacancies of teachers in the schools through the scheme and directed that the posts created under Sarv Shiksha Abhiyan for new primary schools,

upgraded primary schools and EGS centres and those of third teacher for innovative activities shall be filled up through the medium of Rehbai-e-

Taleem Scheme by the Directors of School Education in their respective areas of jurisdiction. It also provided that the number of available posts of

regular teachers shall be worked out by the respective Directors of School Education and communicated to the Administrative Department for

being referred to the prescribed authority for selection. For the post of third teacher created for teaching English in the primary schools the

Government vide Order No. 14003-Edu of 2003 dated 22.8.2003 prescribed the minimum qualification to be a graduation degree.

4. The writ petitioners after having acquired the qualification of 'Adeeb-E-Kamil' from Jamia Urdu, Aligarh, applied for various posts advertised

under the above scheme. The respondents, however, did not treat the qualification of 'Adeeb-E-Kamil' as equivalent to the graduation level

qualification, as such did not consider the petitioners for engagement. Feeling aggrieved by their non-consideration, the petitioners have filed the

present writ petitions.

5. Undisputedly, before this controversy arose, the respondents have been offering appointments to the candidates possessing the qualification of

'Adeeb-E-Kamil' by treating the same to be equivalent to the qualification of graduation.

6. The question whether 'Adeeb-E-Kamil' is equivalent to graduation also arose in SWP No. 531/2005, entitled *Molid. Jamil v. State of J&K*.

Vide order dated 30.5.2005 the writ petition came to be disposed of in terms of the following observations:

As it is not disputed that the petitioner is not (sic) possessing the qualification of Adeeb-E-Kamil, therefore, Director School Education, Jammu,

respondent No. 2, is directed to consider as to whether the qualification possessed by the petitioner is equivalent to graduation and in case the

qualification possessed by the petitioner is found to be equivalent to B.A. (Graduation), he may be considered for the post of RET teacher along

with other candidates for the post to be filled in village Saroola, Tehsil and District Rajouri, under rules.

7. Pursuant to the above direction, the Director School Education, Jammu wrote to the Registrar, University of Jammu to clarify as to whether the

qualification of 'Adeeb-E-Kamil' was equivalent to graduation (B.A.). Responding to the above communication, the Assistant Registrar of the

University of Jammu wrote to the Joint Director, Directorate of School Education as follows:

Kindly refer to your letter No. DSEJ/W/11049 dated 14.9.2005 on the subject cited above. In this connection, it is to inform you that the

examination "" Adib Kamal"" of Jamia Urdu Aligarh was treated as equivalent to ""Adib Fazil"" of this University and after passing of Adib Fazil from

this University a candidate has to appear and qualify under completion category three subjects except Persian in B.A. Part-I, II & III to be treated

as equivalent to graduate of this University.

8. It appears the above communication came to be considered by the Education Department of J&K Government. In this behalf the Under

Secretary to Government, Education Department vide Letter No. Edu/W/J/41/2006 dated 9.1.2006 wrote to Director, School Education, Jammu

as follows:

I am directed to refer to your letter No. DSEJ/RET/2790 dated 23.11.2005 issued on the subject and to inform you that as per the clarification of

Jammu University vide its letter dated 20.9.2005, only those candidates having Adib Kamil/Adib Fazil qualification are to be treated as graduates,

who after passing of above said examination qualify three subjects in BA Part I, II and III except Persian under completion category.

9. It is not disputed that on the last date of submission of application forms

pursuant to the advertisement notice issued for engagement of Rehbar-

e-Taleem teachers, none of the petitioners had qualified under completion category in three subjects except Persian in BA Part-1, II & III.

10. Thus, in terms of communication dated 9.1.2006, quoted above, the Government through its Education Department has decided that the

qualification of ' Adeeb-E-Kamil' would not be equivalent to graduation without further Qualifying three subjects in BA Part-1, II and III except

Persian.

11. For assailing the validity of above stand, the contention of learned Counsel for petitioners is that the opinion of University is not binding upon

the State for the purposes of prescribing and recognizing any particular qualification for employment. The University may not accept any

qualification acquired from outside the State for granting admissions as a valid qualification but, at the same time, there is no bar for the State to

recognize such qualification as valid for the purpose of employment under the State. It is submitted that the Ministry of Home Affairs, Department

of Recruitment and Administration, Government of India has by its office memorandum recognized the qualification of 'Adeeb-E-Kamil' as

equivalent to B.A. standard, therefore, there is no reason for the State also for not recognizing the same as equivalent to B.A. standard. It is also

submitted that the State has already been treating 'Adeeb-E-Kamil' as equivalent to B.A. standard and, accordingly, appointing the persons with

that qualification on various posts available, as such now it cannot be permitted to take a contrary stand.

12. Office memorandum of Government of India relied upon by the petitioners provides as follows:

Office Memorandum

Subject:-Recognition of the courses offered by the Jamia Urdu Aligarh for the purpose of recruitment under the Central Government.

The undersigned is directed to say that on the recommendations of the Board of Assessment for Educational Qualification, the Government of

India have decided to recognize the following courses offered by the Jamia Urdu, Aligarh for the purposes of employment under the Central

Government

Name of the Certificate Nature of Recognition

Adeep Examination Standards....

Addeb-e-Mahir....

Adeeb-Kamil Recognized for the posts of employment to the posts which requires knowledge of Urdu of B. A. standards.

Moallim-e-Urdu....

2. In so far person working in the Indian Audit Department are concerned, these orders issue in consultation with the office of the comptroller and

Auditor of India.

13. From the memorandum, it is manifest that 'Adeeb-E-Kamil' has been recognized as of B. A. standard only for the purpose of employment to

the posts which require knowledge of Urdu of B. A. standard. In the present case the posts advertised do not carry any such requirement.

14. Be that it may, it is the prerogative of the employer to prescribe any eligibility qualification for the candidates to a post which it desires to fill up.

For filling up a post available under the State Government, it is for the Government to prescribe the eligibility qualification for the post. In

prescribing such qualification, the Government is also competent to say as to wherefrom or from which institutes such qualification should have

been acquired by the candidates. No fetters can be placed upon this power of the State Government on the basis of any policy decision to the

contrary taken by the Central Government relating to the posts under it.

15. In the instant case, the State Government through its Education Department has taken a decision that 'Adeeb-E-Kamil' shall not be the

graduation level qualification without passing three subjects in B. A. Part I, II & III except Persian; Such decision cannot be validly faulted with

simply because it has been taken after obtaining the opinion of the University. If the University was not recognizing 'Adeeb-E-Kamil' as graduation

level qualification without passing three subjects in B.A. Part I, II & III except Persian for the purpose of admissions, it was also open for the

Government for not recognizing the said qualification as equivalent to graduation for the purpose of seeking employment on the posts in the State

Government as a matter of policy. If the State at some point of time had adopted the policy of accepting the qualification of 'Adeeb-E-Kamil' as

equivalent to graduation, it could under law change that policy and impose conditions for accepting the said qualification as equivalent to

graduation. From the letter dated 9.1.2006 it appears that as per the State 'Adeeb-E-Kamil' would be graduation level qualification only if a

candidate in addition passes three subjects in B.A. Part I, II & III except Persian for the purposes of employment in the Education Department.

Therefore, there is no merit in the contention of learned Counsel for petitioners.

16. Now having answered the common question, I would deal with the individual writ petitions.

17. In SWP Nos. 246/2004, 1595/2004, 654/2005, 1286/2005, 1635/2005, 158/2006, 241/2006, 317/2006, 423/2006, 757/2006, 778/2006,

816/2006, 853/2006 and 1519/2006, the petitioners have not been considered for appointment as Rehbar-e-Taleem Teachers for the reason that

their qualification of 'Adeeb-E-Kamil' has not been treated equivalent to graduation. As already held, the qualification of 'Adeeb-E-Kamil' cannot

be treated as graduation in the absence of passing three subjects in B.A. Part-I, II & III except Persian for the purposes of employment in the

State. Therefore, there is no merit in these writ petitions and the same are, accordingly, dismissed along with connected CMPs.

SWP No. 100/2006

18. In this writ petition the grievance projected by the petitioner is that by not treating the qualification of 'Adeeb-E-Kamil' as equivalent to

graduation, she is not being considered for deputation to undergo B.Ed. Training. As already held, the said qualification is not equivalent to

graduation. The petitioner, therefore, cannot be considered for B.Ed, course being otherwise ineligible. In view of this, there is no merit in the writ

petition. It is as such dismissed along with the connected CMP.

SWP No. 1711/2006

19. Vide order dated 22.7.2006 passed by the Zonal Education Officer, Bafliaz, the petitioners were appointed as Rehbar-e-Taleem Teachers.

Thereafter, vide order dated 2.8.2006 passed by the Zonal Education Officer, their engagement orders have been withdrawn on the ground that

the same could not be made in view of the direction issued by the High Court on 3.5.2006 in SWP No. 757/2006. The said order reads as

follows:

Notice. My attention is drawn to an ad-interim direction passed in SWP No. 231 /2006.

Notice in CMP also. In the meantime, subject to objections of other side, it is provided that in case any vacancy out of the advertised vacancies is

available against which the petitioner was also empanelled for village Behramgala shall remain vacant till next date before the Bench.

20. It is admitted case of the parties that vide the above quoted order this Court directed to keep the posts available in Village Behramgala as

vacant. Therefore, the appointments of petitioners could not have been made until the vacation of above order. The respondents noticing the

position have withdrawn the appointments of petitioners. Thus, no illegality can be attributed to the withdrawal of appointments. The petitioners if

were desirous of contesting the above said direction, they ought to have approached the Court in SWP No. 757/2006 instead of filing the instant

writ petition. Without prejudice to the said right of petitioners, this writ petition shall stand dismissed along with the connected CMP.

SWP No. 1437/2005

21. Pursuant to the advertisement notice dated 29.6.2004, the petitioner was empanelled for engagement as Rehbar-e-Taleem Teacher under Sarv

Shiksha Abhiyan. In the panel the name of petitioner figures at Sr. No. 6, whereas the name of respondent No. 5 figures at Sr. No. 22.

22. The grievance of petitioner is that instead of considering his case for engagement in view of his merit position, the name of respondent No. 5

has been considered by finding her to be more meritorious for the reason that she has obtained the qualification of 'Adeeb-E-Kamil' equivalent to

graduation.

23. The case of petitioner is that the qualification of 'Adeeb-E-Kamil' cannot be considered as equivalent to graduation and on the basis of said

qualification respondent No. 5 cannot be allowed to steal a march over him. Though respondent No. 5 was yet to be appointed, yet apprehending

that she might be appointed, the petitioner filed this writ petition. Vide interim direction dated 10.10.2005 the appointment of respondent No. 5

has been stayed. As already held, the qualification of 'Adeeb-E-Kamil' is not equivalent to B.A., therefore, the same cannot be taken into

consideration while determining the respective merit of empanelled candidates.

24. In view of this position, the writ petition is disposed of with a direction to the respondents that if the post advertised is still vacant, the same

shall be filled up on the basis of merit. While determining the merit of empanelled candidates, the qualification of 'Adeeb-E-Kamil' shall not be

treated as equivalent to graduation. Connected CMP shall also stand disposed of.

SWP No. 596/2006

25. Pursuant to advertisement notice dated 29.6.2004 applications were invited for engagement of Rehbar-e-Taleem Teachers for the vacancies

which became available at village level. The Zonal Education Officer, Manjakote prepared the panel of Village Sarola, Zone Manjakote for six

vacancies, against which 22 candidates applied. As per the respective merit of the candidates, a merit list was prepared. The petitioner figured at

Sr. No. 7 of the panel. Out of the panel so prepared, the candidates figured at Sr. No. 1 to 5 were appointed on the post. However, sixth post

was not filled up in view of the interim direction passed by this Court in SWP No. 1437/2005, entitled, Mohd. Shakeel v. State of J&K. The

petitioner being at Sr. No. 7 in the panel was not considered in view of her lower merit position against the candidates figuring at Sr. Nos. 1 to 5.

26. It is not disputed by the respondents that one Mohd. Imtiyaz son of Mohd. Muneer, who was figuring at Sr. No. 1 of the panel and who stood

appointed in Middle School, Saroola vide order dated 11.12.2004, after joining the post and performing his duties for sometime absented from the

post. On coming to know about the selection of said Mohd. Imtiyaz for B.E. Course at R.E.C., Srinagar, the Zonal Education Officer, Manjakote

issued notices to him to resume his duties vide communications dated 28.6.2006 and 12.7.2006, but he did not join on the post. Consequently, the

Zonal Education Officer, Manjakote vide his Order No. ZEO/MK/388 dated 17.7.2006 terminated the services of said Mohd. Imtiyaz, resulting

into availability of a vacancy.

27. The case of petitioner is that against the post becoming available due to termination of said Mohd. Imtiyaz, she ought to have been considered

for appointment being at Sr.No.7 in the panel. The stand of respondents is that the panel prepared pursuant to advertisement notice dated

29.6.2004 is not alive for having been operated upon and, therefore, the petitioner cannot be considered against the said vacancy.

28. I have heard learned Counsel for the parties. In my view the stand taken by the respondents for not considering the petitioner against the

available post is in consonance with law. Once the panel is operated upon, it lives its life and thereafter any fresh vacancy arising out of the

selection cannot be filled up from the panel which has already expired.

29. This being the position, there is no merit in the writ petition. It is as such dismissed along with connected CMP.

30. SWP No. 327/2006 is detached from this batch of writ petitions and shall be listed separately.