

(2019) 04 J&K CK 0108

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 672 Of 2018, IA No. 01 Of 2018

Ram Parsad

APPELLANT

Vs

Jammu & Kashmir Service Selection Board And Another

RESPONDENT

Date of Decision : 12-04-2019

Acts Referred:

Citation : (2019) 04 J&K CK 0108

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : S.C. Mansotra, Amit Gupta

Final Decision : Disposed Off

Judgement

1. J&K Service Selection Board-respondent issued an Advertisement Notification No.06 of 2013 dated 10th of May, 2013 inviting applications for different posts including three posts of Drivers, Divisional Cadre, Jammu of the Finance Department. The petitioner being eligible in all respects applied for the aforesaid posts, which were indicated at S.No.367 of the Advertisement Notification. On the basis of the shortlisting criteria framed by the respondents, the petitioner was amongst 23 candidates shortlisted for the posts in question. The petitioner figures at S.No.18 of the Annexure-A appended with the Notification issued by the respondents for driving test/interview. The Notification aforesaid was issued on 20.03.2018 and as per Notification, the date for driving test/interview was fixed for 28.03.2018. The petitioner, however, could not attend the driving test on the stipulated date. He made a representation to the respondents to permit him to appear for the driving test on the ground that he had missed the driving test conducted on 28.03.2018 due to traffic jam. He claims that he had to travel all the way from Kathua to Jammu, therefore, could not make it in time. It is also stated that by the time petitioner reached, the driving test was over. The petitioner also submits that as against three notified vacancies, there was only one candidate, who attended the driving test but failed to qualify. Having failed to evoke any response to his representation, the petitioner has filed the instant

petition seeking inter alia a direction to the respondents to conduct the driving test afresh and permitting the petitioner to participate in the selection process. During the pendency of the writ petition, the petitioner apprehending that the posts may be re-advertised, the petitioner has filed application seeking direction to the respondents to restrain them from embarking upon the fresh exercise for filling up the posts.

2. The respondents have filed their reply affidavit stating therein that out of the 23 candidates including the petitioner called for driving test, 22 candidates remained absent and only one candidate, namely, Ganesh Singh Rakwal participated and he too failed to qualify the test. Due to non-availability of eligible candidates, the selection list could not be framed and all the three posts of driver under open merit category remained unfilled. The matter was considered in the 139th Board Meeting on 02.07.2018 in which a unanimous decision was taken to re-advertise the posts.

3. Having heard learned counsel for the parties and perused the record, I am of the view that no exception can be taken to the decision taken by the respondents to re-advertise the posts. Admittedly, 23 candidates including the petitioner, who were found eligible by the respondent-Board to participate in the driving test had been informed well in advance that the requisite driving test would be conducted on 28.03.2018 but none except one Shri Ganesh Singh Rakwal attended the driving test. He, too, failed to qualify. In such situation, the respondent-Board was left with no option but to re-advertise the posts for making selection afresh. The plea of the petitioner that he had missed to attend the driving test due to traffic jam, is not substantiated by any material and is, thus, not acceptable. The petitioner had sufficient notice to attend the driving test, yet he chose not to attend the same for the reasons best known to him. Whether he was prevented by sufficient cause to attend the test or deliberately missed it, is a disputed question of fact, which cannot be gone into in these proceedings. The petitioner like 21 others missed the Bus from a distance, and the one who reached in time, could not board it. In any case, the respondent-Board was left with no option but to take a decision with regard to initiation of fresh selection process.

4. Learned counsel for the petitioner fairly concedes that the decision of the Board to re-advertise the posts is not illegal or bad in the eyes of law in any manner, but submits that due to the respondent-Board having taken more than five years to conduct the driving test and conclude the selection, the petitioner has been rendered ineligible to participate in the fresh selection process on account of having become overage. He, therefore, restricts his prayer only to the extent of providing some relaxation in his age so that he should participate in the selection process if initiated by the respondents afresh.

5. I have given my thoughtful consideration to this aspect of the matter and feel that equity demands that the petitioner is given one opportunity to participate in the selection process and the age should not come in his way. There is reason for holding so. Indisputably, the process of selection was initiated by the respondent-

Board vide Notification No.06 of 2013 issued on 10th of May, 2013. The process remained pending for almost five years and the Notification for driving test was issued only on 20.03.2018 fixing 28.03.2018 as the date of driving test. Since the respondent-Board had woken from the slumber after more than four years, it was expected that it would give adequate time to the eligible candidates to participate in the driving test. A week's time, in the given circumstances, could not be termed as sufficient notice of the driving test. That apart, the representation made by the petitioner on 28.03.2018 itself should have been attended, considered and decided one way or the other, but, the same has not been done by the respondents so far. Keeping the process lingering for a period of 5 years has rendered the petitioner ineligible by efflux of time. This aspect cannot be lost sight of by the Court exercising equitable jurisdiction.

6. For the aforesaid reasons, I do not find any merit in the claim of the petitioner that he is entitled to a direction to the respondents to fix a fresh date for driving test and allow him to participate, but, I am certainly persuaded by the submissions made by the learned counsel for the petitioner that, in the given facts and circumstances, the petitioner deserves one more chance to participate in the selection process, should the one initiated afresh to fill up the posts in question, his becoming overage in the meanwhile notwithstanding. Accordingly, this petition is disposed of by providing that in case the respondents initiate fresh process of selection as has been decided by the respondent-Board in its 139th Board Meeting, the petitioner, if eligible, shall be allowed to participate, his having crossed the maximum age prescribed notwithstanding. The respondent-Board shall consider the candidature of the petitioner on the basis of eligibility, which the petitioner possessed in terms of the Advertisement Notification No.06 of 2013 dated 10th of May, 2013. It may be noted that the aforesaid direction in favour of the petitioner has been passed purely on equitable considerations and in peculiar facts and circumstances of this case and therefore, would not be treated as a precedent for future.

7. Disposed of as above along with connected IA(s).