
(1996) 08 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : S. W. P, No 1453 of 1995

Randeep Singh S/o Sh.Angrez Singh R/o Barwal, Block APPELLANT
Barnoti, Tehsil and Distt.Kathua, age 25 years,?Petitioner

Vs

State of J&K through Commissioner/Secretary to Govt.of RESPONDENT
Jand K in Health, Family Welfare and Medical Education
Department Civil Secretariate, Jammu

Date of Decision : 12-08-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) KashLJ 413 : (1997) 1 SCT 226

Hon'ble Judges : B.A.Nazki, J

Bench : Single Bench

Advocate : R.K.Bhatia, P.S.Bhardwaj, Advocates appearing for the Parties

Judgement

Respondent No. 3 issued advertisement notice No. 5 of 1995 dated 5. 6. 1995 whereby applications were invited from candidates to various

posts including the one post of Dental Assistant in Health and Family Welfare Department, for the District Kathua. The advertisement prescribed

minimum qualification for the post as matric with diploma in Dental Assistant course from State Medical Faculty or any other recognised institute.

Various other candidates were laid down in the advertisement notice regarding which this court is not concerned presently. One of the conditions

with which the court is concerned laid down in the advertisement notice, was that no application will be entertained after the expiry of the last date

i.e., 10.7. 1995. The petitioner had appeared in PartII (Final) examination of Dental Assistant in May 1995. The petitioner admittedly on the date

of filing the application for consideration of appoint, had not qualified the Dental Assistant's course. He applied in anticipation of his result which

was declared in August. 1995 whereas the last date for filling the applications was July 10.1995. The petitioner was called vide No.

SSRB/K/95/3891 dated 12.9.1995 to appear for an interview on 6.10.1995. According to the petitioner he appeared in the interview but the

scheduled date and he was interviewed. But at the time of interview he was informed by the committee that he was not eligible for selection on the

ground that he had not passed his diploma on the date which was the last date for presentation of application forms. The petitioner, on the basis of

the communication communicated to him orally by the interviewing committee, has filed this petition and challenged the decision of the respondents

not to consider him for the post. He has given certain instances whereby, according to him, respondents have made appointment of persons who

were not qualified on the date the application had to be presented.

The case of the petitioner is that since he was eligible on the date of interview, therefore, he was entitled to be considered. He also submits that

since he was the only candidate from Kathua district who had applied for the post therefore, it would not be to the detriment of any other

candidate if he was considered and finally appointed.

Objections have been filed and learned counsel for the parties have agreed that since the matter involves a short controversy, it may be decided at

this stage.

Respondents in their objections have stated that it had been emphatically made clear in the advertisement notice that all applications should

accompany the requisite certificates. It was further notified through the advertisement notice the crucial date for determining the eligibility of a

candidate would be the date fixed as last date for receiving of the applications, therefore it was necessary that a candidate should possess the

requisite qualifications on the date which was fixed as the last date for filling the applications. The date of interview is not material. It has further

been contended that since no right had accrued to the petitioner to be considered, therefore, he could not seek a mandamus from this Court.

On facts there no disputes between the parties. The only question to be considered in this writ petition is whether a candidate who was not eligible

on the date fixed as last date for receiving the applications, but becomes subsequently eligible on the date of interview, could be considered for

appointment or not ?

The matter is no longer resintegra and there are two judgments of the Apex Court which can guide this court in coming to a right conclusion. The

judgment on which the petitioner has relied is titled Ashok Kumar Sharma and Another V. Chander Shakhar and Another reported in 1993 (1)

SLR 379. In this case a special leave petition before the Supreme Court arose from a decision of our own High Court in which Justice T. K.

Thommen and Justice V. Ramaswami gave majority judgment whereas Justice R. M. Shony gave a majority opinion. The facts of the case were

that an advertisement notice was issued by the State Government by which applications were invited for appointment to the posts of Junior

Engineers and the last date filed for submission of applications was July 15,1992. The appellants before the Supreme Court had appeared in B. E.

examination and were awaiting results which were declared on August 20, 1992 much after the last date for submission of applications. Interviews

were held and the appellants before the Supreme Court were declared selected on April 21,1983 and they were accordingly appointed by the

selection committee they were placed senior to the respondents where upon respondents challenged their appointment on the plea that they were

not even eligible to apply on the date fixed for submitting application forms. The matter was taken in the High Court by two different writ petitions.

Two learned Single Judges of this Court by two separate judgments, dismissed the writ petitions and that the same were hit by laches and the High

Court also held that the selection had only been made broadbased. Appeals were taken against these two judgments and the L.PA bench reversed

the decisions An appeal was taken to the Supreme Court and the Apex Court after examining the legal position in particular Rule 37 of the J and K

Pub. Service Commission Business Rules, which provided that application of candidates who had appeared at the examination result whereof was

awaited, must be accepted provisionally. The rule also laid down that no candidate shall be permitted to take interview unless he is declared

successful before the date of interview. Justice Thommen and Justice Ramaswami ruled that rule 37 was not directly applicable to the facts of the

case before their Lordships but they held that the principle laid down in the rule could be applied to the facts of the case. Justice Thommen

speaking for the majority held :

If the principle of rule 37, is by analogy applicable, the fact that notice of provisional entertainment of applications, subject to passing of the

examination before the date of interview, is a requirement in the interests of candidates who fell within that category. The appellants are by analogy

persons of that category, but they have no complaint on any such ground.

The Supreme Court found that the appellants had passed the examination before the interviews conducted and the selection committee had

interviewed and selected them and they had been appointed. It up held the view of the learned Single Judges of this court that the result was that

the recruiting authority had made selection process broadbased and secured the best available talent on comparative merit. The learned Judges

upheld the judgments of the learned Single Judges of this Court and reversed the judgment of the LPA bench. However, Justice R. M. Sahay did

not agree with the majority but upheld the selection of the appellants on equities.

Learned counsel for the petitioner submits that the present case is governed squarely by this judgment, therefore, and petitioner was entitled to be

considered for appointment. On the other hand, counsel for the respondents submits that the judgment of the Supreme Court in Ashok Kumar

Sharma' s case (supra) was again examined in a later judgment titled U. P. Public Service Commission V. Hlpana reported in 1994 (2) SLR 59.

The facts of the said case were that the U. P. Public Service Commission issued advertisement notice for appointment to the post of Munsiffs. The

total number of vacancies available on that date was 50. The qualification for appearing the examination was that the candidate must possess on

the last date fixed for receipt of applications a degree of Bachelor of laws of a University established by law in Uttar Pradesh or any other

University of India recognised for this purpose by the Governor which entitles him to practice in courts of law or be an Advocate, Vakil or Pleader

on the roll of or be entitled to practice in the High Court of Judicature at Allahabad or courts subordinate thereto, etc. It was further required that

the application shall be accompanied by an attested copy of High School and Intermediate certificates, Bachelor Degree and Law Degree

Examination certificates and marks sheets of each examination. The last date for receipt of applications was fixed to by August 20,1988. The

respondents before the Supreme Court had appeared at the law Degree examination result whereof had not been declared till August 20, 1988, which was the last date for submission of applications. The respondents before the Apex Court, therefore on plain reading of the advertisement notice, was not eligible to be considered for selection on August 20, 1988. After she applied, she successfully cleared the Law Degree examination and her results were declared in October, 1988. The Public Service Commission allowed her to appear in the examination held on May 3, 4, 5, 1990. She passed the examination and was expecting a call for the interview. She was not invited for interview and on enquiry she learnt the Public Service Commission was of the view that since she was not eligible on the crucial date, therefore, she could not be interviewed. She approached the Allahabad High Court who vide an order dated April 12, 1991, directed the Public Service Commission to call her for interview which were being held on 15th and 16th July, 1991. In its order dated July 12, 1995, the court, however, directed withholding of the result of the candidate and accordingly her result was not declared. On March 11, 1993, the High Court finally disposed of the matter by which the Public Service Commission was directed to declare her result. It was further directed that if she had succeeded in the interview, her name should be recommended to the State Government for appointment. The High Court further directed that in case her name is recommended for appointment and there is no post available, a supernumerary post should be created for her so that her appointment is made. This order was challenged before the Supreme Court. The Apex Court held that on plain reading of the advertisement notice pursuant to which the respondent had made application it was clear that she was required to possess the degree of Bachelor of Laws on the last date fixed for receipt of applications which was August 20, 1988. The Supreme Court further found that a candidate who had not passed the Law Degree Examination before August 20, 1988, was obviously not in a position to comply with the requirement of submitting her certificates. The Supreme Court further found that admittedly the respondent had not complied with the requirement and had not furnished her certificates with the application and had only stated that her results were awaited. Therefore, the Supreme Court found that on August 20, 1988, respondent was not eligible even to apply and she became eligible

only in October 1988 when the results were declared. The Court found it necessary, in order to determine the matter, to refer and examine Ashok

Kumar Sharma's case, (supra). On scrutiny of the Ashok Kumar Sharma's case, the Supreme court came to two important conclusion : (i) the rule

37 of the Public Service Commission Business Rules, was not applicable even on analogy and (ii) that the candidates in Ashok Kumar Sharma's

case were interviewed and selected by the Recruiting Authority on the basis of and order passed by the Secretary of the concerned department

who had directed the Board to interview them. The Supreme Court further found that Ashok Kumar Sharma's case was not a case of extension of

rule 37 by analogy but factually the appropriate Authority had taken a decision to follow the same procedure. It also found that Justice Sahay was

of the view that it would be unfair to quash selection after such a long lapse of time. Therefore, on equitable consideration the learned Judge had

agreed with the order proposed by the majority. Mr. Justice Ahmedi (as His Lordship then was) delivered the judgment in the present case and

while analysing the judgment in Ashok Kumar Sharma's case, held :

Two things stand out from this judgment, namely, the majority applied by analogy the principle of rule 37 whereas Sahai, J. endorsed the decision

on equitable Considerations. It must, however, be noticed that in that case a conscious decision was taken by the Secretary of the Department that

such candidates who submitted the applications after the last date for receipt of applications but before the interviews were held should be

considered eligible for appointment. This decision was not required to be gone into. Pursuant to this decision such candidates were examined and

selected on merits and were ultimately appointed. It was only when they were granted seniority over other that the latter challenged their

appointments after a long lapse of time. The Court was, therefore, reluctant to disturb the status quo.

The Supreme Court further found that the ratio of Ashok Kumar Sharma's case was not attracted by the case before the Court.

On the same analogy it can safely be held that the ratio of Ashok Kumar Sharma's case cannot be attracted to the facts of the present case which

are almost identical to the facts of the case before the Supreme Court titled, U. P. Public Service Commission V/s Alpana. The advertisement

notice in the instant case clearly should that the certificates of academic and technical qualifications must be with the application. On the last date of receipt of the application the petitioner on his own showing was not qualified, therefore, he could not present his certificates. As such his application was not found entertainable on the last date. The law laid down by the Supreme Court is clear and unambiguous that once conditions are laid down by the advertisement notice, whole process of selection has to be made in accordance with those conditions and it is only in Ashok Kumar Sharma's case where the Court on the basis of equities and on the basis of an order passed by the competent authority declaring such persons to be eligible who had become qualified before the date of interview, upheld the selection. Besides, in Ashok Kumar Sharma's case appointment of such candidates was not the main issue. Their appointment had only been challenged by certain candidates who had also been appointed but who had been shown inferior in merit to the candidates who had acquired qualification after the last date. For these reasons I do not find any merit in this writ petition which is accordingly dismissed.