

**(2019) 04 J&K CK 0066**

**In the Jammu And Kashmir High Court**

**Case No :** Service Writ Petition (SWP) No. 1191 Of 2016, IA No. 01 Of 2016

Sadaf Fayaz

APPELLANT

Vs

State Of Jammu & Kashmir & Ors

RESPONDENT

**Date of Decision :** 02-04-2019

**Acts Referred:**

Jammu And Kashmir Civil Services Decentralization And Recruitment Rules, 2010 — Rule 14(4), 14(7)

**Citation :** (2019) 04 J&K CK 0066

**Hon'ble Judges :** Ali Mohammad Magrey, J

**Bench :** Single Bench

**Advocate :** J.A. Kawoosa, Mir Suhail

**Final Decision :** Dismissed

## Judgement

1. The petitioner has filed this petition for issuance of a writ of mandamus commanding the respondents, i.e., the Services Selection Board and the authorities of the School Education Department, to recommend and appoint her against one of the posts of Lab. Assistants in District Anantnag which have remained unfilled on account of non-joining of the selectees pursuant to advertisement notice no.781 (10 of 2013).

2. The case of the petitioner is that she had offered her candidature for the post of Laboratory Assistant available in the School Education Department in District Anantnag, advertised by the Services Selection Board in terms of advertisement notice no.781 (10 of 2013). In all eight such posts were advertised with the break up of 05 posts in OM, 01 post in RBA, 01 post in SC and 01 post in ST category. The petitioner was an OM category candidate. It is averred in the petition that after the conduct of the written test and viva voce, the Selection Board prepared and forwarded the select list of 08 candidates to the Education Department vide communication no.SSB/Secy/Sel/2015/11977-83 dated 16.11.2015. Pursuant thereto, the Director, School Education, Kashmir, in terms of notification no.DSEK/NT/LA/506/2016/AA/398-99 dated 22.02.2016, directed

the selectees to deposit the requisite original and self attested certificates in the Directorate within 10 days. According to the petitioner only 2 candidates in the OM category deposited their documents with the Directorate and they were appointed vide order no.398/DSEK of 2016 dated 18.03.2016, leaving 03 posts in the open merit category unfilled. The petitioner claims that in the 10+2 Examination she had secured 533 marks out of 750 marks and feared well in the written test and the viva voce; whereass the selected candidates, as is evidenced by Annexure A to the petition, which is the appointment order of the selectees, had obtained far less marks in the 10+2 Examination, viz. 344/600, 380/600 and 382/750, respectively, and, therefore, she had a right to be selected and appointed against one of the left over vacancies. Hence this writ petition for the relief first above mentioned.

3. The respondents of the Selection Board in their reply have stated that in the selection process the petitioner obtained 67.1111 points whereas the last selected candidate obtained 69.222 points, and that the candidate who figured in the waiting list obtained 69.1111 points. It is further stated that the School Education Department did not make any communication with the Selection Board regarding non-joining of any selected candidate. It is also stated that in order of merit there were four other candidates between the petitioner and the last selected candidates.

4. It may also be mentioned here that in their compliance report submitted in response to an order of the Court dated 23.05.2018 concerning an interim order passed in the matter, the respondent, Director, School Education, Kashmir, submitted that apart from the two selected candidates, the next candidate in order of merit figuring in the wait list was also appointed after obtaining approval thereto from the Administrative Department vide order dated 30.12.2016, and that all other posts vacant in the Department have been referred to the Administrative Department vide communication dated 30.12.2016.

5. I heard learned counsel for the parties and considered the matter.

6. From the facts stated in the reply by the Selection Board, it becomes manifest that the petitioner had failed to secure the merit in the Written Examination and the viva voce conducted by the Selection Board to find a place amongst the selected candidates, or even in the waiting list. It rather is her admitted case that she did not make the grade to find herself either in the select list or the waiting list. She is seeking to rely on the marks obtained by her in the qualifying Examination viz. 10+2 Examination. The marks obtained by a candidate in the qualifying examination have no relevance in determining his/her merit in the process of selection when such merit is to be determined on the basis of a written test/viva voce, unless it is shown that the selection was to be made on the basis of merit obtained by the candidates in the qualifying examination or on the basis of academic record. That is not the case herein; the selection process was competition based and only such candidates could be selected against the five posts in the open merit category as would figure in order of merit. The

petitioner having failed to obtain such merit as would secure her a place in the select list or the waiting list, she has no case and this petition is held to be wholly without any merit.

7. It may be mentioned here that in terms of Rule 14(4) of the Jammu and Kashmir Civil Services Decentralization and Recruitment Rules, 2010, the selection committee is required to restrict the select list equal to the number of vacancies for which requisition was made and recommend it to by the requisitioning authority. Sub-rule (7) of the aforesaid Rule 14 provided that the concerned selection committees of the Board shall also draw up a waiting list of 25% of the total number of selected candidates and forward the same to the requisitioning authority for consideration against drop-out vacancies. This sub-rule, however, was amended in terms of SRO 439 dated 11.12.2015, providing that for the words 25% of the total number of selected candidates, the words 33.33% of the total number of posts advertised, subject to a minimum of one, shall be substituted. In the instant case, 5 posts in the OM category had been advertised. 33.33% of 5 posts would come to 1.6; that means that the Selection Board was required to draw up the waiting list of two candidates. The responses filed by the respondents indicate that there existed only one candidate in the waiting list who, too, was appointed. Thus, the Board had committed a serious error in drawing up the wait list of the candidates. However, the petitioner has not challenged the select list or the wait list, nor is it her case that had the wait list been prepared in accordance with the amended sub-rule (7) of Rule 14 of the aforesaid Rules, she would have figured therein and would have been appointed. It, in fact, has come in the response of the respondent Board that there are four candidates between the last selected candidate and the petitioner in order of merit, meaning thereby that even if the wait list had been prepared of two candidates, she would still not come therein. That being so, the writ petition deserves outright dismissal on this count also.

8. In light of the above, the writ petition is dismissed, being without any merit. The interim direction(s) subsisting are vacated, dismissing the connected IA.

9. No order as to cost.