
(2019) 04 J&K CK 0027

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal (LPA) No. 92 Of 2018, IA No. 01 Of 2018

Sangeeta Sharma

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

Date of Decision : 05-04-2019

Acts Referred:

Citation : (2019) 04 J&K CK 0027

Hon'ble Judges : Gita Mittal, CJ; Sindhu Sharma, J

Bench : Division Bench

Advocate : Sunil Sethi, Mohsin Bhat, Amit Gupta, Rahil Raja

Final Decision : Dismissed

Judgement

Gita Mittal, CJ

1. By way of the instant appeal the appellant has challenged the order dated 18th of May, 2018, dismissing the SWP No. 3285/2015 which had been filed by the appellant. In the writ petition, the appellant had challenged the appointment of private respondent No. 4 as Junior Lab. Technician, District Cadre, Jammu under the "Actual Line of Control" (ALC) category.

2. The appellant has submitted that applications to this post were invited by virtue of the Advertisement dated 10th of May, 2013, applications were invited and that condition No. 11 in the advertisement prescribed as follows:

"(11) The prescribed qualifications reflect the bare minimum requirement of the job and mere possession thereof shall not entitle a candidate to be called for written test/ interview and also grant weightage to the higher qualification in relevant line/ discipline as may be decided by the Board."

(Emphasis supplied)

3. It is the submission of Mr. Sethi that in view of the above stipulation, there was no discretion upon the Services Selection Board (hereinafter referred to as

the ?Board?) not to grant weightage for a higher qualification. The only discretion which vested in the Board was with regard to the extent of the weightage.

4. It is further submitted by Mr. Sethi that that weightage had to be accorded for a higher qualification is also manifested from the notification dated 28th of January, 2015, notifying the date for the interview, wherein the clause 3, the Board had stipulated as follows:

"3) The additional qualifications / reserved category certificate acquired by the candidate after the last date of receipt of application forms shall not be entertained."

5. Mr. Sethi contends that in this background, whereas the private respondent had only the 10+2 qualification, the appellant possessed the higher qualification of a graduate degree, for which the appellant had to be accorded weightage for the higher qualification. Learned Senior counsel points out that the appellant had secured 47.05 marks under the ALC category while the private respondent had secured 49.048 marks. The submission is that if the weightage was duly accorded for the higher qualification, the appellant was certainly more meritorious than the private respondent.

6. The submission on behalf of the appellant is that, therefore, the criteria adopted by Board, wherein no weightage was accorded for a higher qualification of a candidate, was bad and action of the Board in working such criteria tantamounted to changing the rules for the selection after the same had commenced by issuance of the advertisement.

7. The submissions did not find favour with the learned Single Judge who rejected the submission that the rules of the game had been changed after the selection process had commenced. The learned Single Judge also found that the appellant had, with full knowledge of the criteria, participated in the selection process consciously without any objection. The writ petition in question challenging the criteria was filed only after the appellant did not succeed in the selection. Consequently by the order dated 18th of May, 2018, the writ petition stands rejected.

8. The present appeal, as noted above, stands pressed on these very grounds.

9. Mr. Amit Gupta, learned AAG appearing for respondent Nos. 2 & 3 as well as Mr. Rahil Raja, learned counsel for the private respondent No. 4 have contested these submissions and defended the correctness of the impugned order dated 18th May, 2018.

10. We have heard learned counsel for the parties and also perused the record of the case.

11. There is no dispute before us, at all, that by the advertisement notice No. 6 of 2013 dated 10th of May, 2013, applications were invited for the posts of Junior Lab. Technician in the Health Department of the State at serial No. 462. The

Advertisement stipulated "prescribed qualification" for this post as 10+2 with diploma in Lab. Technician.

12. In terms of the condition 11 in the advertisement, discretion was conferred upon the Board to decide whether to grant weightage to the higher qualification in relevant line/discipline or not. On 12th of September, 2013, the Board laid down the following criteria for selection to the above mentioned post:

Agenda item No. 2

Criteria for the post where basic qualification is 10+2

Criteria for the post where basic qualification is 10+2:- Marks obtained in the written test out of 180 marks to be proportionately converted into points)=80 points (on pro-rata basis)

i) Viva Voce = 20 points

ii) Total = 100 points

13. We are informed that this criteria was published on the official website of the respondents and was in full knowledge of all persons including the appellant. The notice dated 12th of September, 2013 also shows that the same notification was directed to be published in three leading local newspapers ("Daily Excelsior", "State Times", "Kashmir Times", Greater Kashmir", "Aftab" etc. of Jammu and Srinagar) on three consecutive dates by the Director Information of the Government of Jammu and Kashmir.

14. Based on the said criteria, the written examination was held on 12th of October, 2014. The notification with regard to the interviews after the written examination was published on the 28th of January, 2015. Pursuant to the said notification, on 7th of February, 2015, viva voce was conducted by the Board.

15. The discretion which stands conferred on the Services Selection Board in Condition 11 of the Advertisement to lay down the criteria, enabled the Board to decide as to whether any additional weightage was to be accorded to a higher qualification. The appellant has clearly accepted this position as well as the validity of the criteria which was notified on 12th of September, 2013.

16. It is to be noted that the petitioner has admitted these facts. The petitioner does not dispute the knowledge of the criteria which was notified by the official respondents on 12th of September, 2013. With full knowledge thereof, the petitioner participated in the examination which was held more than one year after the publication of the criteria. She has also participated in the viva voce which was held on 7th of February, 2015, more than four months after the written examination.

17. The record shows that the petitioner did not even make a representation, let alone lay any legal challenge to the prescription made by the decision of the Board on 12th of September, 2013.

18. The writ petition came to be filed on or around 12th of December, 2015, i.e., more than two years after the publication of the criteria by the Board on 12th of September, 2013. The same is also more than eight months after the petitioner participated in the viva voce.

19. The learned Single Judge has held that a uniform criteria was adopted by the Services Selection Board for the purposes of making the selection keeping in before the performance of the candidates in the written test and the viva voce. Additional weightage has not been accorded to any candidate on account of higher qualification.

20. The contention of the appellant that the Board had challenged the criteria is baseless and has been rightly rejected by the learned Single Judge by the impugned judgment.

21. We may note that the challenge of the appellant has primarily been rejected on the well settled principle that a person who consciously and with full knowledge takes part in the process of selection cannot, thereafter, turn around and question the method or criteria of selection or its outcome. It is trite that by such participation with knowledge of the criteria, the appellant has waived any right to question the advertisement, criteria or methodology adopted by the Board for making the selection. The appellant does not allege any malafide on the part of any member of the Board. (Reference: AIR 1986 SC 1043, Om Prakash Shukla vs Akhilesh Kumar Shukla & Ors; (1995) 3 SCC 486, Madan Lal and others Vs. State of J&K and others; AIR 2008 SC 1913, Dhananjay Malik and others Vs. State of Uttaranchal and others; (2010) 12 SCC 576, Manish Kumar Shahi Vs. State of Bihar and others; (2013) 11 SCC 309, Ramesh Chandra Shah and others Vs. Anil Joshi and others)

22. The appellant has opted to file the writ petition as an after thought more than eight months after the selection process was complete. The above narration of dates would also show that if the appellant's name had appeared in the merit list, she would not have challenged the selection.

23. Before us, Mr. Sunil Sethi, learned senior counsel has further submitted that the illegality in not giving weightage for higher qualification is writ large in the face of the stipulation by the respondents in the weightage to be accorded for appointment of teachers by the Department of Education wherein it is stated that the candidates with 10+2 would be considered and that preference would be given to the candidates having higher qualification. With regard to appointment of teacher in the department of Education, weightage is given for higher education.

24. In this regard, Mr. Rahil Raja, learned counsel for the respondent No. 4 has drawn our attention to the Advertisement dated 10th of May, 2013 which was issued by the respondents inviting applications to the various posts of different departments of the State Government. By this Advertisement, the respondents have invited applications to the posts of Junior Lab. Technician in the Health

Department at serial No. 462 and for Teachers in the Education Department at serial No. 470. In the last column of the advertisement the respondents have stipulated the "prescribed qualifications". We extract the relevant portion of the advertisement dated 10th of May, 2013 which reads as follows:

462

Health Deptt

Jr. Lab Tech

Jammu

11

3

2

2

1

0

19

10+2 with Diploma in Lab Tech. from recognized institute. Or SMF or any institute recognized by Government

470

Education

Teacher

Jammu

265

94

37

46

14

10

466

10+2 preference will be given to the candidates having higher qualification and those having passed M.Ed, B.Ed and Diploma ETT/NTT

(Emphasis by us)

25. Clearly, the Advertisement itself had prescribed the qualification of only 10+2 for junior lab. technicians. Where as for teachers it is stated that preference would be given to the candidates having higher qualification.

26. We are informed that this stipulation in the prescribed qualifications of preference being accorded to higher qualification for Teachers is relatable to the concerned Recruitment Rules. The Recruitment Rules of Lab Technician do not contain any such stipulation, while those for teachers contains the preference for candidates with higher education.

In this background, the submission made by Mr. Sethi premised on the Advertisement notice for the post of Teachers and the weightage attached to the higher qualification for appointment to this post is devoid any merit.

27. Mr. Raja, learned counsel for the respondent No. 4 has also contended that the appellant had been awarded only 47.05 marks while the respondent No. 4 had secured 49.048 marks in the ALC category. In this background, it has rightly not been contended before us that the appellant had secured higher merit.

28. For all the foregoing reasons, the impugned judgment cannot be faulted on any legally tenable ground. The present challenge is devoid of any merit and is hereby rejected.

This appeal is accordingly dismissed.