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(2011) 03 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1998 of 2009

Shabir Ahmad Bhat — APPELLANT

Vs

State and Others — RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2011) 2 JKJ 365

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Muzaffar Hussain Attar, J.—Petitioners are substantively holding the posts of Excise and Taxation Inspectors. In para 5 of the writ petition

the following stand is taken by the Petitioners:

5. That the Petitioners appeared in the Departmental Examination of Excise Taxation Inspectors, Session December 2004, which started on

18.12.2004 and concluded on23.12.2004. The Result of the said Examination was declared by the J&K Public Service Commission Jammu vide

Notification No. PSC/EXAM/ET/2004/06 dated 17.01.2005, wherein the Petitioners were been shown to have failed in the following papers.

Petitioner No. 1 in paper A, B, E

Petitioner No. 2 in paper B, D

Petitioners have admitted that they failed to qualify paper A, B, E and B, D respectively.

3. In para 10 of the petition it is pleaded by the Petitioners that in order to clear the backlog papers, they took the departmental examination and

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Petitioner No. 1 is admitted to have failed in paper A by one marks and Petitioner No. 2 in paper B by seven marks. Para 10 of the writ petition is

reproduced as under:

10. That Petitioners in order to clear backlog papers appeared in Departmental Inspectors Examination and as per the result declared Petitioner

No. 1 have been shown to have failed in paper A by one mark and Petitioner No. 2 have been shown to have failed in paper B by seven marks

and Petitioners have made representations to the Respondent Public Service Commission for rechecking and revaluation of their respective

papers....

4. The cause for filing this petition is Notification No. PSC/EXAM/2009/37 dated 01.09.2009 vide which Respondent-J&K Public Service

Commission (for short ""the PSC"") invited applications from eligible candidates desirous of taking the Departmental Examination. The Departmental

Examination pertains to Excise and Commercial Taxes Part III which examination is conducted in accordance with the Rules called Jammu and

Kashmir Excise and Commercial Taxes (Departmental Examination) Rules 2006 (for short ""the Rules of 2006) read with J&K Public Service

Commission (Conduct of Examination) Rules, 2005 (for short the Rules of 2005).

5. Petitioners' application forms were not entertained being ineligible which constrained them to file this petition, inter alia, on the ground that the

Petitioners are governed by Jammu and Kashmir Excise and Sales Tax (Departmental Examination) Rules, 1972 notified vide SRO 137 dated 7th

March, 1972; the PSC was under obligation to conduct examination twice a year but as the same was not done, they were not given opportunity

to take examination in the papers in which they were declared to have failed; The representations/applications filed for seeking reevaluation of

answer scripts having not been considered by the Respondent-PSC, it cannot be said that the Petitioners are ineligible.

6. Court vide order dated 31.12.2009 by way of an ex parte interim order directed the Respondents to issue Roll Number Slips to the Petitioners

provided they have filed the application forms in time. It was further directed to allow them to appear in the examination. It was further directed

that the result of the Petitioners shall not be declared. The order was hedged with the condition that issuing roll number slips and sitting in the

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examination shall not confer any right/title upon the Petitioners.

7. On notice issued in this case, Respondents have filed objections in which it is stated that the Petitioners are not eligible for taking the Excise and

Taxation Officers Examination and, accordingly, it was prayed that petition be dismissed.

8. Heard learned Counsel for the parties.

Considered the matter.

9. Learned Counsel for the Petitioners invited the attention of the Court to Rule 4 (3) (c) of the Rules of 1972 and submitted that in terms of the

said rules the Petitioners having qualified three papers are, thus, eligible to take the examination in terms of Notification of 2009. Learned Counsel

also referred to the pleadings, more particularly para 18 of the petition, and submitted that the PSC was duty bound to conduct the departmental

examination twice a year and they having failed to take examination after 2005, the Petitioners were, thus, disabled to qualify the backlog papers

so could not be prevented from taking examination in pursuance of Advertisement Notification of 2009. Learned Counsel also submitted that the

applications filed by the Petitioners for reevaluation having not been considered, it cannot be said in law that the Petitioners are not eligible.

10. Learned Counsel for the Petitioners also referred to Jammu and Kashmir Excise and Commercial Taxes (Departmental Examination) Rules

2006 (for short "" the Rules of 2006) notified vide SRO140 dated 21.04.2006 and invited the attention of the Court to Rule 9 of the said Rules to

buttress his argument that the Petitioners are eligible to take the examination for which applications have been invited in terms of notification of

2009.

11. Learned Counsel for the Respondents on the other hand submitted that as the Petitioners failed to clear the backlog papers and in view of the

eligibility clause of the Rules of 1972 and the Rules of 2006, the Petitioners being ineligible could not be permitted to take examination. Learned

Counsel submitted that the Petitioners, however, have been allowed to take examination in pursuance of interim orders passed by this Court.

Learned Counsel also submitted that the rule provided for taking examination twice in a year is not mandatory in nature and because of some

difficulties, which include pendency of some writ petitions, examination could not

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be conducted. It is further submitted that this argument does not

lie in the mouth of Petitioners, in as much as, they have made attempt to clear the backlogs by appearing in the subsequent examination. Learned

Counsel further submitted that if Petitioners have filed the representation and even if it is assumed that no decision has been taken on the same, that

will not entitle them to take the examination.

12. In order to appreciate the issue raised it becomes necessary to refer to Rule 4 (3) (c) of the Rules of 1972 and Rule 9 of the rules of 2006.

13. Rule 4 (3) (c) of the rules of 1972:

Rule 4 (3) (c) An unqualified Inspector who has cleared three or more than three papers of Excise and Taxation Officer Standard Examination

(higher standard) under the syllabus prescribed under the old rules: Provide that such candidates qualifies the remaining papers under the old

syllabus in not more than two chances.

14. Rule 9 of the rules of 2006:

9. A candidate who has not fully qualified under the old rules on the date from which these rules come into force shall be deemed to have fully

qualified if:

(a) he passes in the remaining paper/papers under the old rules and according to the old syllabus in the prescribed number of chance as were due

to him under the old rules but not exceeding two in two consecutive examinations held by the Commission following the date of enforcement of

these rules:

Provided that where a candidate fails to qualify under the old rules in the chances under Clause (a) or does not avail of the chance as permissible

under the said clause, he shall be deemed to qualify the examination, if he pass3es the same under the new rules in the two consecutive

examinations held under the new rules or such number of chances as may be available to him under the new rules without any setoff for the

paper/papers passed by him under the rules superseded hereby.

(b) A certificate in such form as the Commission may prescribe shall be issued to the candidate who has passed the examination in all the papers.

15. On plain reading of Rule 4 (3) (c) of the rules of 1972 and Rule 9 of the Rules of 2006, it becomes writ large on the face of the statute that an

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unqualified inspector who has cleared three or more than three papers in higher standard examination and who qualifies the remaining papers in not

more than two chances, would become eligible for taking the examination for Excise and Taxation officers. Admittedly, the Petitioners have not

qualified all the papers provided in the syllabus. In the admitted fact position of this case, the Petitioners are ineligible and cannot be allowed to

take the examinations for which applications have been invited in terms of notification of 2009 by the PSC. The eligibility of a candidate is

determined either by the statutory rules or by the terms and conditions of advertisement notification. The candidates who satisfy the eligibility

requirement of statutory rules/advertisement notice constitute one single class in law and ineligible candidates constitute different class in law. Equal

protection of laws is available to members of one class who are similarly circumstanced. Equal protection of laws cannot be extended to persons

who are not similarly circumstanced.

16. Rules of 1972 and 2006 provide eligibility criteria and, thus, carve out a class of persons who satisfy such eligibility criteria. The eligible and

ineligible candidates in law cannot be ordered to be clubbed in process of selection as that would be violative of mandate contained in Article 14 of

the Constitution of India.

17. The argument of learned Counsel for the Petitioners that the Petitioners are eligible on the basis of Rule 4(3)(c) of the rules of 1972 cannot be

accepted as they have not qualified the remaining papers which were required to be cleared in two chances. Assuming the situation that two

chances have not been provided to them by the Commission that still will not make them eligible for taking the examination. On this allegation, if

there is no justifiable cause available with the PSC, the Petitioners may have claim against the PSC but if on this reasoning it is held that the

Petitioners are eligible to take the examination then that will tantamount to rewriting the statute which does not fall within the powers of the Courts.

Legislature is assigned job of legislation and Courts have only to interpret and enforce same. They have not to legislate the laws. The another

argument of learned Counsel that application for reevaluation of answer scripts has not been considered, cannot change the fate of the case for

above stated reasons. If the argument of learned Counsel for the Petitioner is

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accepted that would tantamount to directing the PSC to obey the statutory rules in breach. No such writ can be issued in law.

18. For the above stated reasons, this petition being meritless is dismissed.

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