
(2018) 02 J&K CK 0067
In the Jammu And Kashmir High Court
Case No : LPASW No.183 OF 2016

SHAHID NAZIR

APPELLANT

Vs

STATE OF JAMMU & KASHMIR AND ORS

RESPONDENT

Date of Decision : 23-02-2018

Acts Referred:

Jammu and Kashmir Civil Services(Decentralization and Recruitment) Act, 2010 —
Section 13, 15
Jammu and Kashmir Civil Service (Decentralization of Recruitment) Rules of 2010 —
Rule 15, 14

Citation : (2018) 02 J&K CK 0067

Hon'ble Judges : BADAR DURREZ AHMED;CJ

Bench : Single Bench

Final Decision : Dismissed

Judgement

Candidate,Written Exam,Interview Pts.,Addl. Pts.,Total Pts.

Petitioner,52.00,16.00,5(M.Tech.),73.00

Respondent No. 6,59.00,14.00,---,73.00

involving a tie.Â The learned Single Judge, however, on examining the select list of 2016 issued by the Board came to the conclusion that the alleged" ,,,,

practice of appointing a candidate who was older in age, when two candidates secured equal marks, was in vogue. We have also seen the said select" ,,,,

list of 2016. In the select list only the total marks obtained have been indicated and no breakup of the marks vis-Ã -vis written test, viva voce or any" ,,,,

additional marks have been indicated. Therefore, just by looking at those lists, it cannot be said that the principle which the Services Selection Board" ,,,,

has stated to have followed was not followed in this select list also. It is not clear from the select list that age was the only criteria for resolving a tie.,,,,

Therefore, the finding of the learned Single Judge, in our view, does not immediately and logically follow only upon a perusal of the select list of" ,,,, 2016.Â ,,,,

11. Since the issue of validity of the Regulations or of Rule 15 of the said Rules was not in question, the learned Single Judge ought not to have gone" ,,,, into it. Anyway, even if we assume that the Regulations are not valid for whatever reason, it is evident that the principle embodied in Regulation 47" ,,,, has been followed by the Service Selection Board in resolving cases where the marks of the candidates end in a tie. That principle cannot be set aside ,,,, unless it is arbitrary and whimsical. There has to be some method of resolving a tie. The method indicated is the method where, first, the marks" ,,,, obtained in the written examination are to be taken, secondly, the marks in viva voce are to be considered and, even if that does not resolve the tie, " ,,,, then only age would be the determinative factor. We do not find this principle to be arbitrary or discriminatory as the select list is to be prepared on the ,,,, basis of merit. The first criteria in determining merit in the case of an overall tie ought to be the marks obtained in the written examination because ,,,, that would be the first stage of objectively evaluating merit. We may point out that age alone is not a good criteria for evaluating merit.Â Because if ,,,, that were to be the case then, in cases which did not involve a tie, why should younger persons having higher marks be selected at all." ,,,,

12. A point had been made by the learned counsel appearing on behalf of the respondent No.6 that Rule 14 of the said Rules had not been followed. ,,,, Rule 14 indicates that the Service Selection Board shall hold a written test and also the viva voce for the eligible candidates. It also prescribed that the ,,,, number of candidates to be called for viva voce should not be less than three times and more than five times the number of vacancies to be filled up. It ,,,, specifically provides that the final selection shall be made by the Board on the basis of marks/points obtained in viva-voceÂ added to the marks/points ,,,, obtained in the written test plus the weightage that may be provided for any higher/additional/special qualification (on pro-rata basis) ,,,,

13. In the present case this is exactly what has happened. The marks in the written test and the marks obtained in viva-voce have been added and a ,,,, further five marks have been given to respondent No.6 because of his higher qualification of M Tech. Therefore, the respondent No.6 can have no" ,,,,

grievance on this aspect of the matter.,,,,

14. For all the above reasons, the appeal is allowed. The impugned judgment is set aside. The writ petition is dismissed.".,,,,