

(2018) 12 J&K CK 0029

In the Jammu And Kashmir High Court

Case No : Letter Patent Appeal (LPASW) No. 102, 126, 128 Of 2017, Service Writ Petition (SWP) No. 2216 Of 2010

Shashi Parihar And Ors @APPELLANT@Hash State Of Jammu & Kashmir And Others

Date of Decision : 17-12-2018

Acts Referred:

Citation : (2018) 12 J&K CK 0029

Hon'ble Judges : Rajesh Bindal, J;Tashi Rabstan, J

Bench : Division Bench

Advocate : Surinder Kour, Mohd. Aleem Wani, . Kapil Gupta, F.A. Natnoo, Amit Gupta, Sunil Sethi, Parimoksh Sethi, Abhinav Sharma, O.P. Thakur, M.R. Qureshi

Final Decision : Dismissed

Judgement

1. In all the three appeals, appellants have assailed common order dated 31.05.2017 passed by the learned Single Judge, therefore, all these appeals are being disposed of by a common order.

2. Mrs. Surinder Kour, learned senior counsel appearing for the appellants in LPASW No. 102/2017 submitted that the posts of Stock Assistants in Sheep and Animal Husbandry Department were advertised by Jammu and Kashmir Service Selection Recruitment Board (hereinafter referred to as 'the Board') on 05.10.2007. The posts pertained to six districts in Jammu Division. Vide Notification dated 29.05.2008, the criteria for selection was notified. It provided that for Matric with Science, a candidate was to be awarded 40 points. It further provided that 15 points were to be awarded for Diploma in Sheep Husbandry. The criteria as prescribed is reproduced below for the facility of reference:-

S. No.

Qualification

Points

1

Matric with Science

40 Points

2.

10+2

05 Points

3.

Graduation

10 Points

4.

P.G

10 Points

5.

Diploma in Sheep Husbandry

15 Points

6.

Viva-voce

20 Points

Total

100 Points

3. Interviews were conducted on 11.06.2008 and the provisional select list was published in the newspapers on 31.12.2009. The names of the appellants were forming part of the provisional select list, however, no appointment letters were issued. To the surprise of the appellants, fresh criteria for selection was notified on 06.09.2010, wherein 15 points prescribed for Diploma in Sheep Husbandry were deleted and the points provided for Matric with Science were increased from 40 to 55. Reference was made to the Rules governing post in J&K Animal Husbandry (Subordinate) Service Recruitment Rules, 1988(hereinafter referred to as 'the Rules'), which provides for the qualifications for the post in question and the mode of recruitment. The same is 40% by way of promotion and 60% by way of direct recruitment. After the change in criteria, final select list was published in the newspaper on 17.09.2010. The name of the appellants did not figure therein.

4. The argument raised is that, the criteria laid down for selection could not be changed after the process for selection had already started, but in the case in

hand, undisputedly the criteria was changed even after provisional select list was published in the newspaper. Idea was only to select the favourites, who could not make to the select list in terms of the criteria already notified. To buttress the arguments, reference was made to fresh advertisement issued on 23.01.2012 for recruitment to the same post, namely, Stock Assistant. In the selection criteria, marks were provided for Diploma in Sheep Husbandry. Meaning thereby that it was for the selection in question only that the criteria was changed after the process for selection had started.

5. Learned senior counsel for the appellants further submitted that the selection process was completed only for Jammu Division, whereas for the posts advertised for Kashmir Division, selection was not finalized. It was further argued that there was nothing wrong with the criteria, as laid down initially as even for higher qualifications prescribed in the rules, namely, graduation, post-graduation also, extra marks had been provided. Hence, as Diploma in Sheep Husbandry was not the minimum qualification required for recruitment to the post, extra marks for that qualification had rightly been provided.

6. In support of her arguments, reliance was placed upon the judgment of Hon'ble the Supreme Court rendered in K. Manjusree Vs. State of Andhra Pradesh and Another; (2008) 3 SCC 512.

7. Learned counsel appearing for the appellants in other appeals adopted the arguments raised by the learned senior counsel.

8. In response, Mr. Abhinav Sharma, Advocate, appearing on behalf of private respondents fairly submitted that he does not dispute the proposition of law that the rules of game cannot be changed mid-stream. However, there is no law which debars correction of any error in case, the criteria laid down is contrary to the Rules. Initially in the criteria laid down, the Board had committed an error, which was corrected. The correction was required to be made as the issue was raised by some of the candidates. The matter was taken up with the department concerned and fresh criteria, strictly in terms of the eligibility conditions laid down under the Rules, was framed. There is no estoppel against statute. An error can always be rectified. There was no challenge to the criteria re-framed. In fact the appellants waited for the selection process to be over and see whether they come within the zone of selection. Once they found that they could not make grade to the selected list, the writ petitions were filed. Any candidate after participation in the selection process cannot challenge the same later on, alleging that the criteria was not proper.

9. It was further argued that if the selection is bad on account of the criteria being changed, as alleged it will be bad qua the entire selection, but the appellants only raised the issue with regard to the candidates in general category. Selection for the other categories was made in the year 2010. Those candidates joined and are in service. Some of them may have even been promoted. There is no right conferred on any candidate to seek appointment

even if his name is in the final select list, what to talk of the provisional select list, as was the case in hand. There are no malafides alleged. It is further submitted that no candidate has filed any petition in the Court, alleging that on account of qualification specified in the advertisement, which was contrary to the Rules, they could not apply. In support of the arguments, reliance was placed on the judgment of Hon'ble the Supreme Court rendered in *Manoj Manu and Anr. Vs. Union of India and others*; (2013) 12 SCC 171.

10. Mr. Sunil Sethi, learned senior counsel appearing for some of the selected candidates submitted that the criteria of eligibility, which is provided for in the service Rules, cannot be changed. In fact the advertisement was contrary to the Rules, hence, the error was corrected later on. Even the 2012 advertisement, which has been referred to by the learned senior counsel for the appellants is also contrary to the Rules, and no reliance can be placed thereon.

11. Mr. O.P. Thakur, learned counsel appearing for some of the selected candidates submitted that there is no prejudice caused to the appellants, once the selection has been made in terms of the criteria, which was framed strictly as per the service Rules applicable. The issue regarding selection has been raised only pertaining to general category candidates and not to all the categories, whereas the same criteria had been applied for selection of all the candidates. Reference was made to the judgment of Hon'ble the Supreme Court rendered in *Pitta Naveen Kumar and others Vs. Raja Narasaiah Zangiti and other*; (2006) 10 SCC 261.

12. Mr. Amit Gupta, learned Dy. AG, appearing on behalf of the Board submitted that once a mistake in the advertisement was pointed out after publication of the provisional select list, the matter was taken up with the department and the correction was made. The Board is an institution. Neither there is any malafide nor any person by name has been impleaded as party. The evaluation of all the candidates has been done as per the prescribed criteria.

13. In response, learned senior counsel for the appellants submitted that as the selections were finalized on 17.09.2010 immediately after the modified criteria was notified on 06.09.2010, there was no time in between to challenge the same. However, writ petitions were filed immediately after the select list was notified. As far as prejudice to the appellants is concerned, she submitted that the appellants having not been selected in view of the revised criteria, though earlier they were in the provisional select list, they have certainly suffered prejudice.

14. Heard learned counsel for the parties and perused the paper book.

15. There is no dispute on the proposition of law that the criteria laid down for selection cannot be changed after the process has started. Allegations of the appellants in the present case are that the criteria in the case in hand was changed even after the provisional select list was notified.

16. Applications were invited for selection to the posts of Stock Assistants in Sheep and Animal Husbandry Department. It pertains to the vacancies in six districts, namely-Jammu, Doda, Udhampur, Kathua, Poonch and Rajouri. The qualifications required for the posts in question were notified. It is claimed that after the provisional select list was notified by the Board on 31.12.2009, the criteria for selection was changed and a fresh criteria was notified on 06.09.2010. 15 points specified for Diploma in Sheep Husbandry were deleted, whereas 40 points prescribed for Matric were increased to 55. The plea sought to be raised by the learned counsel for the respondents is that the qualification as prescribed in the Rules having not provided for Diploma as one of the qualifications, required for the post and there being an error in the criteria prescribed, the same was rightly modified.

17. In our view, we need not to go into this question. It is for the reason that the undisputed facts on record are that the advertisement pertains to selection to the posts of Stock Assistants in six districts in Jammu Division. Vacancies were notified in the year 2010. The vacancies provided for bifurcation of the posts, namely, for general category and different reserved categories. In the writ petitions filed and in the present appeals, issue has been raised only with regard to selection of the candidates pertaining to general category and that too only for four districts out of six districts in Jammu Division. There is no challenge to the selection of any candidate, who belongs to reserved categories. The selected candidates are not even parties before the Court. Once the issue sought to be raised by the appellants is that the criteria applied for selection to the post of Stock Assistants was illegal and the same could not be revised after the process for selection had started, the same will equally apply to all the candidates, who applied for the posts. Selection of the candidates only in general category cannot be examined. There are other candidates also, who have been selected and appointed, following the same criteria.

18. For the reasons mentioned above, we do not find any merit in the present appeals. The same are, accordingly, dismissed.