

**(2012) 05 J&K CK 0013**

**In the Jammu And Kashmir High Court**

**Case No :** Service Writ Petition (SWP) No. 1199 Of 2009 and CMP No. 2421 Of 2009

Shujat Hussain Shah

APPELLANT

Vs

State and Others

RESPONDENT

**Date of Decision :** 16-05-2012

**Acts Referred:**

**Citation :** (2012) 05 J&K CK 0013

**Hon'ble Judges :** Mohammad Yaqoob Mir, J

**Bench :** Single Bench

**Advocate :** M. Y. Bhat, for the Appellant; S. A. Naik, Advocate, Mr. M. A. Qayoom, for the Respondent

## **Judgement**

Mohammad Yaqoob Mir, Judge

1. In the year 2003 two posts of ReT teachers in Primary School, Khanpora (Pariwan) Educational Zone H. C. Gam, Kulgam, were to be

supplied. The said posts were advertised and various aspirants applied. List of eligible candidates was prepared wherein both petitioner and

respondents No.6 and 7 figured. The minimum required qualification was 10+2. On the relevant cutoff date respondents No.6 and 7 had passed

B.A/B.Sc. Part-II year examination. The petitioner had passed 10+2 examination. Admittedly in 10+2 petitioner had secured 367/600 marks,

respondent No.6 318/600 and respondent No.7 310/600.

2. In total 10 candidates had applied but in 10+2 petitioner possessed the highest marks, so on that basis being meritorious was entitled to be

engaged as ReT teacher but respondent authorities engaged respondents No.6 and 7 while treating them to possess higher qualification because of

having passed B.A/B.Sc. Part II examination.

3. Petitioner had filed a suit before the Court of Sub Judge, Kulgam wherein he had sought grant of mandatory injunction so that the panel

prepared, wherein he figured at serial No.3, is not disturbed. On 30th of August, 2004, the matter had been placed for settlement in Lok Adalat

where petitioner stated that the matter will be settled amicably. On this basis, at his instance, the suit has been dismissed.

4. Subsequently after a gap of three years petitioner filed SWP No.488/2007 which has been disposed of on 30th April, 2007. The said order

provides that the petitioner has projected that he is having higher merit than respondents No.6 and 7 who have been selected, therefore, his merit

position may be acknowledged and he may be engaged against any available ReT post. On such basis petition was disposed of with an

observation that the respondents therein shall consider petitioner's representation but it was made clear that nothing contained in the order shall

prejudice the lawful rights of respondents No.6 and 7 in whose absence petition was disposed of.

5. In compliance to the said order dated 30.5.2007, respondent No.2 (Director School Education) vide order dated 21.5.2009 has considered

case of the petitioner wherein it has been stated that in terms of Govt. order No.1503 of 2003 dated 01.10.2003, broken degree like B.A/B.Sc./

B.Com.(Part I or II) will not get any extra weightage in competitive merit of the candidates. The said order is operative from 1.10.2003 and not

retrospectively. The appointment of respondent No.6 and 7 was made prior to the issuance of said Govt. order. Then it has been concluded that

the claim of the petitioner is not covered under rules so rejected. Dissatisfied therewith, instant petition has been filed.

6. The short questions which emerge for consideration are: (a) whether B.A/B.Sc. Part-I or II possessed by respondent No.6 and 7 at the time of

selection would be a higher qualification; (b) whether selection and consequent appointment of respondent No.6 and 7 in the year 2003 followed

by their appointment as General Line Teacher on completion of five years as ReT is now open to question. Question (a): whether B.A/B.Sc. Part-I

or II possessed by respondent No.6 and 7 at the time of selection would be a higher qualification. It is no more res integra that broken degree

cannot be treated as a higher qualification. Higher qualification than 10+2 means B.A/B.Sc./B.Com, M. A, M. Ed. M.Sc. At the time of selection

admittedly respondents No.6 and 7 did possess a broken degree i.e. they had passed B.A/B.Sc. 2nd year examination but same cannot be termed

to be a degree so as to be taken as a higher qualification, therefore, selection should have been made on the basis of merit in 10+2.

7. Government order No.1503 of 2003 dated 01.10.2003 has made it clear that broken degree like B.A/B.Sc. (Part I and II) will not get any

extra weightage. When it is so, to say it will not have retrospective effect but prospective effect is illogical. Issuance of circulars or orders would

not make a broken degree a qualification. Its effect would be obvious i.e. from amongst respondents No.6 and 7 the candidate lower in merit had

to make way for the petitioner because petitioner admittedly possessed the higher merit in 10+2. Question (b) Whether selection and consequent

appointment of respondent No.6 and 7 in the year 2003 followed by their appointment as General Line Teacher on completion of five years as

ReT is now open to question. Answer has to be 'no' because petitioner had filed the suit in the year 2003 itself but has not pressed the same, then

after a lapse of three years filed SWP No.488/2007, wherein, while restricting his claim for being considered against any available ReT post, his

petition stand disposed of with the direction to the respondents to consider his case without prejudice to the rights of respondent No.6 and 7. That

judgment dated 30th April, 2007 has not been challenged, so the petitioner of his own has acquiesced whatever he had against the respondents

No.6 and

6. The position of respondent No.6 and 7 is further strengthened by the later development i.e. after completing five years of service as ReT they

have been placed as General Line Teachers vide Order No.1317-DSEK of 2008 dated 14.06.2008, which has not been challenged. Therefore,

position of respondent No.6 and 7 is not now open to question.

8. Again an important question for consideration i.e. petitioner admittedly had superior merit in 10+2 so had a superior right as against respondent

No.6 and 7 but has been ignored, now how his position is to be treated. It is this situation which persuaded this Court, while disposing of earlier

petition SWP No.488/2007, to observe that the respondents shall consider

representation of the petitioner. The said representation has been rejected pursuant to order dated 21st May, 2009 but rejection is not in consonance with law because claim of the petitioner has been rejected only on one count i.e. prior to Govt. order No.1503 of 2003 dated 01.10.2003, selection of respondent No.6 and 7 was made, therefore, prior to that date broken degree was treated as a higher qualification which view is not correct. It is a wrong notion based on which broken degree was taken as a higher qualification than 10+2. Government has issued order No.1503 of 2003 so as to make it clear that broken degree will not get any extra weightage because in law broken degree is not a degree, so cannot be treated as a higher qualification. On such count to reject claim of the petitioner is untenable when in terms of judgment dated 30th April, 2007, the respondents were to consider petitioners representation in the context of he having been ignored despite possessing higher merit and was to be considered for being engaged against any ReT post subject to availability. So the consideration order is not in tune with what was required to be done in terms of judgment dated 30th April, 2007.

9. Contention of Mr. Naik, learned Additional Advocate General, is that the petitioner could not be considered even against an available ReT vacancy, whenever any vacancy will be available, same can be supplied by proper selection.

10. Though the submission is attractive but one position has to be made clear that the petitioner at the relevant time though possessed superior merit has been deprived by the respondents (authorities) from getting what he was entitled to, therefore, his case has a peculiar feature and if considered under Rules and adjusted against available ReT vacancy, same cannot be a precedent for extending such benefit to any other candidate who even though may be similarly situated but has not agitated.

11. Viewed thus, impugned order dated 21st May, 2009 is set aside. Respondent No.2 (Director School Education) shall afresh accord consideration to the representation of the petitioner in the aforesaid background and then to pass orders as shall be appropriate. Disposed of as above along with connected CMP.