

(2011) 06 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : LPA No. 104 of 2011 and I A N.169 of 2011

Suhail Ahmad Reshi

APPELLANT

Vs

John Mohammad Bhat and Others

RESPONDENT

Date of Decision : 06-06-2011

Acts Referred:

Citation : (2011) 06 J&K CK 0015

Hon'ble Judges : F. M. Ibrahim Kalifulla, Acting C.J.; Mohammad Yaqoob Mir, J

Bench : Division Bench

Judgement

1. Impugned is the judgment dated 8.4.2011 rendered in SWP No.1580/2008, where-under selection and appointment of the appellant for the

post of Estates/Transport Officer made vide order No.SKIMS-MC 274 of 2008 dated 4.10.2008, has been quashed, further respondents No.2

and 3 have been commanded to consider appointment of writ petitioner No.1 (John Mohammad Bhat) against the said post.

2. Vide advertisement notice No.(01) SKIMS-MC of 2007 dated 31st May, 2007, applications were invited from eligible candidates for various

posts which include one post of Estates/Transport Officer in open category. In the process of selection appellant made the grade so was appointed

vide order No.SKIMS-MC 274 of 2008 dated 4.10.2008. Aggrieved thereof, respondent No.1(writ petitioner) and respondent No.5(Fayaz

Ahmad Hurrah) challenged the said appointment on the ground of ineligibility of the appellant. Said Fayaz Ahmad Hurrah did not pursue the

petition, so the petition to the extent it related to him was dismissed for want of prosecution.

3. In the advertisement notice the qualification and experience for the post of

Estates/Transport Officer has been prescribed as:

B.B.A with one year experience or diploma in Civil/Mechanical Engineering with three years experience in Estates/Transport Department.

4. The appellant admittedly at the time of advertisement notice possessed the degree of B. Tech in Mechanical Engineering but did not possess the

requisite experience of three years in Estates/Transport Department and at the same time was undergoing M. Tech course as a regular student in

National Institute of Technology, Hazratbal. Learned Writ Court noticing the lack of experience of three years of the appellant and also noticing his

position of having been on the rolls of National Institute of Technology, Hazratbal as a regular student from the year 2002 to 2008, opined that the

appellant was ineligible.

5. Mr. Jan, learned counsel for the appellant, projected that the minimum qualification required was diploma in Civil/Mechanical Engineering with

three years experience but since the appellant possess higher qualification, in the course of higher qualification more efficiency and experience is

gained, therefore, appellant in the opinion of the expert Selection Committee was found to have the requisite qualification and experience. That

apart, further added that the appellant possessed two certificates, one issued by Kashmir Eicher Authorised Dealer Eicher Motors Ltd. wherein it

is certified that the appellant has worked as Transport Executive in the authorised Dealership of said Eicher Motors from January 2004 to

February 2005 on part time basis and the second certificate is issued by Khan Alsaba Automobiles wherein it is certified that the appellant has

worked on optimization projects using various soft wares like Primavera, MS Project from March 2005 to March 2007 on part time basis, so has

gained lot of experience. Therefore, on both counts he was perfectly eligible.

6. In the advertisement notice the qualification/experience prescribed is B. B. A. with one year experience or diploma in Civil/Mechanical

Engineering with three years experience in Estates/Transport Department. The employer, as such, required the services of the candidates who

possess the said qualification/experience. The qualification so prescribed is not the minimum qualification but in terms of the advertisement notice is

the only qualification.

7. In the advertisement notice, as per rules, the requirement of qualification/

experience is made mention of. In certain cases minimum qualification is the requirement, so there is no bar for considering the candidates with higher qualification as against the post advertised. The expression used in the advertisement notice in the instant case is 'prescribed qualification/experience', which would mean the qualification as is made mention of.

Contention of the learned counsel is that the prescribed qualification takes into sweep minimum as well as maximum qualification. Supporting his

submission, learned counsel relied on the judgment *Munna Roy Vs. Union of India (UOI) and Others*, .

8. In the reported judgment it is clearly mentioned that the minimum qualification required was matriculate. It is on this analogy the candidate

possessing the degree of graduation was excluded and same was held to be a dubious method of excluding the graduate candidate from selection.

It shall be quite apt to quote following para from the said judgment:

...The list of successful candidates included her name but the ground for cancellation of the entire list without even informing the applicant was that

though the minimum qualification required was a matriculate she was a graduate and thus dubious method has been adopted for being selected. We

really fail to understand that if a candidate possesses a qualification higher than the required qualification and the advertisement itself had prescribed

the same then how can the authority come to a conclusion that selection has been made by adopting a dubious method. In the aforesaid premises,

we have no hesitation to come to a conclusion that the reasons which weighed with the authorities to quash the selection are not germane and must

be held to be arbitrary and irrational. We, therefore, set aside the impugned order of the High Court as well as the order of the authorities

concerned quashing the selection panel and direct that the order of the Tribunal be implemented.

9. Since the appellant possesses the B. Tech degree, even if he is said to be possessing qualification, higher than what is prescribed still he is

required to have the requisite experience in Estates/Transport Department. When the appellant was on the rolls of National Institute of Technology,

Hazratbal from 2002 to 2008, how could he be said to have gained the requisite experience. The above referred two certificates are of no help to

the appellant so as to obviate the requirement of prescribed experience because

during the period for which said certificates have been issued, the appellant was on the roll of National Institute of Technology, Hazratbal.

10. Learned counsel for the appellant contended that the experience gained before attaining the requisite qualification has to be counted as the gaining of experience is not to be linked with the degree qualification. Buttressing the submission, learned counsel relied on the judgment Anil Kumar Gupta and Others Vs. Municipal Corporation of Delhi and Others, .

11. With respects, the said judgment is of no help to the appellant because in the reported judgment the in-service candidates acquired requisite qualification and they being in service had also acquired professional experience as they were doing the similar job and it is in that context their such professional experience was held not to be linked with the degree qualification and for such experience marks were allocated but in the instant case appellant being on the rolls of National Institute of Technology, Hazratbal, no such experience could be said to have been gained. Therefore, the law laid down in the reported judgment does not cover the case of the appellant.

12. Another situation which emerges for consideration is as to whether direction for considering the appointment of respondent No.1(writ petitioner) as against the said post could be issued. The requirement of possessing the requisite experience in Estates/Transport department does not appear to be satisfied by the writ petitioner.

13. Be that as it may, even otherwise such direction is impermissible. Though the learned counsel for respondent No.1 contended that no fault can be found with the said direction because it is up to the official respondents to accord consideration in accordance with rules but this submission has to be rejected because the direction is in the backdrop of what has been stated in the judgment. It is relevant to quote what has been held in the impugned judgment:

The petitioner No.1 is the only candidate from amongst the eligible candidates who have participated in the selection process, to call in question the selection and appointment of respondent No.4. Against the said backdrop, in wake of quashment of selection and appointment of respondent No.4, a direction is to be issued to respondents to consider appointment of petitioner No.1 against the post of Estates/Transport Officer in

accordance with rules.

It would imply that it is only the respondent No.1 (writ petitioner) who is to be considered and appointed when it is nowhere shown that he was

next in merit or figure in the merit/selection list. Even on the question of locus his petition could have been dismissed which has not happened but

now illegality has been noticed in the selection and appointment of the appellant, therefore, post which fell vacant should have been marketed and

everybody including writ petitioner and the appellant could also participate in the fresh selection process subject, of course, on satisfying the

requirement of eligibility.

14. The judgment impugned qua quashment of order No.SKIMS-MC 274 of 2008 dated 4.10.2008 is maintained whereas the direction for

considering the appointment of petitioner No.1 (John Mohammad Bhat) against the said post is unsustainable. The post being vacant shall be open

to be re-advertised and in the process of selection all eligible candidates, which may include appellant and respondent No.1, on satisfying the

requisite eligibility shall have the right to compete.

15. The appeal on aforesaid terms shall stand disposed of.