
(2007) 03 J&K CK 0008
In the Jammu And Kashmir High Court

Surjeet Singh Bali	Vs	APPELLANT
State of Jammu & Kashmir and Others		RESPONDENT

Date of Decision : 14-03-2007

Acts Referred:

Citation : (2007) 2 JKJ 382

Hon'ble Judges : Nirmal Singh, J; Mansoor Ahmad Mir, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—This Letters Patent Appeal is directed against the judgment dt.20th of Oct'99, passed by the learned Single

Bench of this Court whereby the writ petition filed by the appellant bearing SWP No. 1540/97 came to be dismissed (for short the impugned judgment).

2. Appellant appeared in an examination of Jammu & Kashmir Judicial Service, which came to be conducted by respondent No. 4 in terms of notification dt. 14th of May'96. He was not selected which constrained him to challenge the selection of private respondents 5 to 10 on the grounds taken in the writ petition aforementioned. During the pendency of the writ petition, appellant gave up his claim vis--vis private respondents 5,8 to 10 and only contested the selection of private respondents 6 and 7.

3. The sole ground which is the bone of contention in this appeal and which was also the bone of contention in the writ petition filed by the appellant is whether respondent No. 4 was within its powers and jurisdiction to entertain and accept the RBA certificates of private respondents 6 and 7 after the cut-of date fixed by it for the submission of application forms.

4. Appellant had taken a ground in the memo of writ petition that the application forms of respondents 6 and 7 were not complete in all respects

for the reason that they submitted their RBA certificates after the cut-of date. Thus were not eligible. Respondent No. 4 had to reject their application forms.

5. Learned Counsel for the appellant while dwelling upon his arguments referred to Rules 14 and 15 of the Jammu and Kashmir Civil Services

(Judicial) Recruitment Rules, 1967 (here-in-after called the Recruitment Rules), and pressed into service what its words ""in all respects"" mean. His

main thrust of arguments was that the aforesaid private respondents had not submitted the RBA certificates within time and thus were in-eligible to

compete in the examination. It is thus stated that the selection of said private respondents is liable to be quashed and the appellant be selected in

the RBA category. In support of his arguments, he has cited the judgments of the Apex Court reported as Ashok Kumar Sharma and Another Vs.

Chander Shekher and Another, State of Punjab and others Vs. Renuka Singla and others, Ashok Kumar Sharma and Others Vs. Chander

Shekhar and Another, State of U.P. Vs. Ram Sawrup Saroj, Jawahar Lal Sazawal and Others Vs. State of Jammu and Kashmir and Others, and

other judgments reported as Naresh Singh Vs. State of J. and K. and Others, Rahul Prabhakar Vs. Punjab Technical University and Others, and

Indu Gupta Vs. Director, Sports Punjab and Another, .

6. Mr. DC Raina, learned Senior Advocate, appearing for respondent No. 4 while rebutting the arguments submitted that the RBA category

certificate only determines the status keeping in view the residence of a candidate who belongs to the said category and the said certificate does

not determine the eligibility of a candidate. The eligibility is to be determined as per the academic qualification. It is stated that the Public Service

Commission was well within its powers to entertain and accept the RBA certificates of private respondents which came to be presented by them

though after the cut of date but before the examination was conducted. It is further stated that the said respondent not only accepted the RBA

certificates of the private respondents but of other candidates also who appeared in the examination and this was done before the examination was

conducted.

7. Learned Counsel for respondents 1 to 3 also submitted that the impugned judgment is well reasoned and needs no interference.

8. Heard.

Considered.

The crux of the matter is whether private respondents 6 and 7 were eligible to appear in the examination?

9. We are of the considered view that the said private respondents were eligible to appear in the examination for the following reasons:

Rule 8 of the Recruitment Rules provides what should be the academic qualification. This Rule reads as under-

8. Academic qualifications:- No persons shall be recruited to the service unless he is-

(a) a Bachelor of Laws of a University established by law in India; or

(b) a Barrister of England or Northern Ireland or a member of the Faculty of Advocates in Scotland or any other equivalent law degree recognized

by the Government of India.

10. It is not disputed that the private respondents whose selection is under challenge were not having the academic qualification but what is

disputed is that they were not in possession of RBA certificates before the cut of date. On a plain reading of Rule of the Recruitment Rules referred

to above, it is crystal clear that private respondents 6 and 7 were eligible to appear in the examination.

11. If a candidate applies under RBA category, he could be selected in the open merit category if he falls within the merit of the said category. It is

profitable to reproduce Rules 11 and 12 of SRO 126/94, which read as under:

11. Concessions. - (1) Notwithstanding anything contained in Rule 10 and subject to the provisions of Sub-rule (2) of this rule, out of the total

number of available vacancies (reserved as well as unreserved), handicapped persons to the extent of 2% and ex-servicemen and children of

Defence Personnel to the extent of 5% shall get preferential treatment for selection in each service class, category and grade.

(2) If a candidate belongs to reserved category, he will be placed in that quota by making necessary adjustment and if he belongs to open category

he will be placed in that category by making necessary adjustment. This shall not affect the percentage of reservations provided under Rule 10.

12. Reservation not bar appointment in open merit. - Nothing in Rule 10 shall bar the appointment of members of the reserved categories against

the vacancies other than, or in addition to, those reserved for them under these rules, if such members are found qualified for appointment in open

merit as compared with persons not belonging to the reserved categories.

12. As per the said Rules, as indicated above, a candidate who belongs to RBA category can be selected in the Open category if he comes within

the criteria as has been done in the case of one Sanjay Parihar and Pawan Dev Kotwal, private respondents No. 5 and 10. Thus the argument of

Mr. Johal, learned Counsel for the petitioner that private respondents No. 6 and 7 were not eligible to appear in the examination is devoid of any

force.

13. The next question which needs to be replied is whether private respondents 6 and 7 have been rightly considered in the RBA category despite

of the fact that they submitted the RBA category certificate after the cut of date but before the examination was held?

14. We are of the considered opinion that respondent No. 4 has exercised its power rightly and the selection of the above respondents is legal.

The impugned judgment is well reasoned for the following reasons:

15. The RBA category certificate relates to the status of a candidate and not to the academic qualification. If a candidate takes a ground that he

belongs to RBA category, he has to produce the said certificate in terms of SRO 126/94.

16. It is not the case of the parties before the court that private respondents 6 and 7 have obtained/got the said status after the examination or after

the cut of date. This is also not the case that RBA certificates produced by the private respondents aforementioned are fake or they do not belong

to RBA category.

17. The RBA status is conferred by residence/domicile. The private respondents were having this status even at the time of submission of

application forms but were not in possession of the certificates concerned, which came to be issued in their favour after filing of the application

forms and before the examination came to be held. They have mentioned in the application forms that they belong to RBA category. While making

this observation, we are supported by what was said by this Court in the case

reported as 2002(1) SLJ 234 J&K Public Service Commission and

Anr. v. Ms Rimpi Ohri and Anr. It is profitable to reproduce para 27 of the aforesaid judgment as under:

...The requisite qualification on the last date of application is relatable to educational qualification. In the case of respondent, we have already held that she was a resident of LAC, at the time of submission of the application and continue to be so even today. If that is so, she was definitely possessing the qualification with regard to the resident of LAC, at the time of closing date of the application i.e. 16.03.1999. Non renewal of certificate would not alter the status of her residence if otherwise she was factually resident of Line of Actual Control. The factum of the respondent/writ petitioner being the resident of Line of Actual Control is not denied by the applicant.

18. It is to be taken into consideration as to what is the purpose, object, aim and ambit of SRO 126/94. The Constitution guarantees that socially

backward be uplifted and up-graded and some benefits be given to them in terms of the Constitutional mandate. The Government of Jammu and

Kashmir formulated the Reservations Rules-SRO 126/94. The purpose of SRO is to confer certain benefits to the members belonging to the

categories of RBA, Line of Actual Control, Scheduled Castes and Scheduled Tribes and no qualification is prescribed except that a candidate

seeking the benefit of any such category should be a resident of a particular area at a particular point of time.

19. If the argument of Mr. Johal, learned Counsel for the petitioner is accepted, that would amount to defeating the aim and purpose of SRO

126/94. It is the constitutional duty of the courts to interpret the rules regarding reservation in such a way which should be beneficial and helpful to

the candidates belonging to the said categories.

20. The writ court has discussed all the judgments cited by Mr. Johal, learned Counsel for the petitioner. The reasoning and interpretation given by

the learned Single Judge is legal one.

In view of the above discussion, we are of the considered view that this appeal fails.

Accordingly, the appeal is dismissed and the impugned judgment dated 20th of Oct'99, is upheld.