
(2020) 08 J&K CK 0026

In the Jammu And Kashmir High Court

Case No : Civil Miscellaneous No. 3179, 3180, 3181, 3184 Of 2020, Latter
Patent Appeals No. 104 Of 2020

Union Territory Of J&K And Others

APPELLANT

Vs

Mohan Lal And Others

RESPONDENT

Date of Decision : 28-08-2020

Acts Referred:

Citation : (2020) 08 J&K CK 0026

Hon'ble Judges : Ali Mohammad Magrey, J;Sanjay Dhar, J

Bench : Division Bench

Advocate : Sajad Ashraf Mir, J. A. Kawoosa

Final Decision : Dismissed

Judgement

Ali Mohammad Magrey, J

1. These applications are filed on behalf of the applicants/ appellants with a prayer that they may be allowed to file the accompanying appeal, alongwith application seeking Condonation of Delay in filing the said appeal, without enclosing therewith the requisite Stamp Papers, Court fee, etc., as well as the certified copy of the impugned judgment passed by the learned Writ Court.

2. For the reasons mentioned in the application, coupled with submissions made at the Bar, both these applications are allowed and the applicants/ appellants are permitted to file the accompanying appeal, alongwith application seeking Condonation of Delay in filing the said appeal,, without enclosing therewith the requisite Stamp Papers, Court fee, etc., as well as the certified copy of the impugned judgment passed by the learned Writ Court. It is, however, directed that the said deficiency shall be immediately made good by the applicants/ appellants, as and when the prevailing lockdown period, announced by the Government on account of outbreak of COVID-19 Pandemic, comes to an end and the Courts start functioning in the normal manner.

3. CMs disposed of as above.

CM No. 3181/2020:

4. By this motion, the applicants/ appellants are seeking Condonation of Delay that has occasioned in filing the accompanying appeal against the judgment dated 11th of February, 2020, passed by the learned Writ Court in WP(C) No. 1673/2019.

5. On the set of facts and the grounds urged, coupled with submissions made at the Bar, the instant application is allowed and the delay in filing the appeal is condoned. Main appeal is taken on board.

6. CM disposed of as above.

LPA No. 104/2020; CM No. 3182/2020:

7. This intra Court appeal is directed against the final order dated 11th of February, 2020, passed by the learned Writ Court in WP(C) No. 1673/2020, in terms whereof, the learned Writ Court has, while allowing the Writ petition filed by the Writ petitioner/ respondent No.1 herein, quashed the operation of the impugned communication dated 7th of May, 2020 with further direction to the respondents/ appellants herein to take the selection process, initiated pursuant to notification No. 02 of 2011 dated 28th of December, 2011, to its logical conclusion and pass appropriate orders. Besides, it was also directed by the learned Writ Court that any subsequent communication(s), including the one dated 30th of July, 2014, was inconsequential and, thus, not to be acted upon.

8. The brief facts leading to the filing of the instant appeal, as come to the fore from a plain reading of the appeal, are that the School Education Department forwarded an indent to the Jammu and Kashmir Services Selection Board for making selection of candidates for the post of Lab Assistant, District Cadre Budgam and Pulwama. Accordingly, as stated, the Jammu and Kashmir Services Selection Board issued Advertisement Notice No. 02 of 2011 dated 28th of February, 2011, inviting applications for the aforesaid posts, wherein the qualification for the said post was prescribed as 'Matric or above with Science subject'. In response thereto, the Writ petitioner /respondent No.1 herein also sought consideration against the Post of Lab Assistant, District Pulwama, under SC category. Subsequently, the Writ petitioner / respondent No.1 was selected against the said post and his name was, accordingly, forwarded by the Jammu and Kashmir Services Selection Board to the School Education Department, vide letter dated 31st of October, 2016. Thereafter, as stated, it had come to fore that the selection has been made on the basis of 'Matric or above with Science subject' qualification, while as the prescribed qualification for the post of Lab Assistant in the School Education Department is '10+2 with Science or equivalent from any recognized University/Board', in terms of SRO 308 of 2008 and, thus, the matter was taken up with the General Administration Department for advice. In response, the General Administration Department, in terms of communication No. GDC-13/CM/2019 dated 7th of May, 2019, advised the School Education Department as under: -

"In terms of Recruitment Rules of the School Education Department, minimum qualification prescribed for the post of Lab Assistant under direct recruitment is 10+2 or equivalent from any recognized University/Board. The instant advertisement notification for the Post of lab Assistant has been issued dehors the rules, by the J&K Services Selection Board, as such, the entire selection process is ab-initio wrong.

The department is advised to inform the J&K Service Selection Board to cancel the selection of the two candidates, selected vide communication dated 31.08.2016 for the post of Lab Assistant and re-advertise these posts afresh, as the candidates cannot be selected on the basis of advertisement notice, which is not in consonance with Recruitment Rules of the department".

In terms of the said communication, the Jammu and Kashmir Services Selection Board was requested to take necessary action in the matter on the above lines. Feeling aggrieved, the Writ petitioner/ respondent No.1 herein filed a Writ petition, being WP(C) No. 1673/2019, wherein he sought quashing of the aforesaid communication dated 7th of May, 2019, besides a 'Writ of Mandamus' commanding upon the respondents/ appellants herein to appoint the petitioner as Laboratory Assistant for which he has been selected by the Jammu and Kashmir Services Selection Board. The learned Writ Court, in terms of the impugned order, has disposed of the said Writ petition by quashing the impugned communication dated 7th of May, 2019 and directing respondents/ appellants herein to take the selection process, initiated pursuant to Notification No. 02 of 2011 dated 28th of December, 2011, to its logical conclusion and pass appropriate orders in that regard.

9. Learned counsel for the appellants submits that, admittedly, the selection of the Writ petitioner/ respondent No.1 herein has been made on the basis of 'Matriculate or above with science subject' qualification, whileas in terms of the Recruitment Rules in vogue at the relevant point of time in the School Education Department, i.e., SRO 308 of 2008, the minimum qualification prescribed for the post of Laboratory Assistant, under direct recruitment, is '10+2 with Science or equivalent from any recognized University/Board', thus, the advertisement notification issued for the post of Laboratory Assistant having been issued dehors the rules by the Jammu and Kashmir Services Selection Board, as such, the entire selection process was/ is ab-initio wrong. It is submitted that, in this backdrop, the Jammu and Kashmir Services Selection Board was, therefore, advised to cancel the selection of the two candidates selected vide communication dated 31st of August, 2016 for the post of Laboratory Assistant, with further direction to re-advertise these posts afresh in view of the fact that no candidate cannot be selected on the basis of an advertisement notice which is not in consonance with the Recruitment Rules of the department concerned. The learned Government counsel contends that although all these aspects were pleaded before the learned Writ Court, but same did not find any favour with the learned Writ Court resulting in disposal of the Writ petition on a wrong premise,

as such, the impugned order deserves to be set aside.

10. We have heard the learned counsel for the appellants, gone through the pleadings on record and considered the matter.

11. The short controversy that has given rise to the present litigation has its genesis to the advertisement notice dated 28th of December, 2011, issued by the Jammu and Kashmir Services Selection Board, whereby applications, inter alia, were invited for the post of Laboratory Assistant for District Pulwama. The qualification prescribed in the said advertisement notice was 'Matric or above with Science subject'. The Writ petitioner/ respondent No.1 herein, after competing in the said process of selection initiated by the Jammu and Kashmir Services Selection Board, appears to have got selected against the said post and his name, accordingly, forwarded to the intending Department, i.e., the School Education Department. In between, the appellants/ respondents in the Writ petition claim to have realized that the notification ought not to have mentioned the qualification as 'Matriculate and above', but ought to have prescribed the qualification as '10+2 with Science or equivalent from any recognized Board/ University', resulting in the matter reaching the General Administration Department, who, vide communication dated 7th of May, 2019, while opining that the advertisement notice in question was issued dehors the rules, advised the Jammu and Kashmir Services Selection Board to re-advertise the post afresh. The said communication was challenged by the Writ petitioner/ respondent No.1 herein before the learned Writ Court and the learned Writ Court, on consideration of the matter, was of the view that even though the advertisement notice was not in consonance with the rules, yet the same cannot be quashed or cancelled only for that technical reason.

12. We are in agreement with the view taken by the learned Writ Court inasmuch as on mere technicality of advertisement notice being not in consonance with the rules, the advertisement notice, which has culminated in the selection of the Writ petitioner/ respondent No.1 herein, cannot be quashed or cancelled. This course of action, if allowed, will cause serious prejudice to the rights and interests of the Writ petitioner/ respondent No.1 herein, who has duly participated in the selection process so initiated by the appellants/ respondents before the learned Writ Court and, after such participation, found his place in the selection list on the basis of his merit. No fault can be attributed to the Writ petitioner/ respondent No.1 herein in the matter as it was the prerogative of the appellants/ respondents in the Writ petition to prescribe the relevant qualification for the post in question in accordance with the rules governing the field. That apart, admittedly, the Writ petitioner/ respondent No.1 herein possesses the qualification of 10+2 as prescribed by the rules in vogue, as such, he cannot be said to be not eligible for the aforesaid post and his selection cancelled/ quashed, moreso, when no other candidate is aggrieved of the selection of the Writ petitioner/ respondent No.1. herein in the case on hand.

13. In view of the above, we find no merit in the instant appeal and, as such,

same shall stand dismissed accordingly, alongwith the connected CM(s).