

(2019) 03 J&K CK 0133

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2591 Of 2011

Verinder Kumar & Ors

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 03 J&K CK 0133

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Amur Kotwal, S. S. Nanda

Final Decision : Dismissed

Judgement

1. Applications were invited from eligible candidates of District Doda only for filling up the Class-IV Posts vide Advertisement notice No.01/06 dated 15.03.2006. The petitioners having qualification of 10+2 and being eligible had applied for the said posts. The number of posts were advertised in different categories are as under :-

Open

-

54

SC

-

8

ST

-

9

RBA

-

18

SOC

-

1

Total

-

90

2. Petitioners submits that vide notification dated 09.05.2010, short listing of the candidates who had applied pursuant to Advertisement Notification No.01/06 was notified in respect of each category and vide notification No.DIPL-9550 dated 11.03.2010 issued by respondent No.2, it was notified for information to all concerned that short listing of candidates who had applied for Class-IV Posts in response to Advertisement Notice No.01 of 2006 dated 15.03.2006, was done on the basis of marks as per their qualification:

8th Pass

-

40 points

10th Pass

-

10 Points

10+2

-

10 Points

Graduate

-

10 Points

P.G.

-

10 Points

Viva

-

20 points.

3. It is submitted that some of the candidates approached this Court vide SWP No.1706/2011 and the respondents were directed to complete the selection process pursuant to Advertisement Notification No.01 of 2006 dated 15.03.2006 within a period of two months, thus, vide notification No.DDC/Class IV 9272 dated 21.10.2011, respondent No.2 issued the select list, since the petitioners' names did not find place in the select list, they are aggrieved of their non-selection challenged the same on the ground that the candidates, who having lesser merit were considered for interview and that the impugned select list is violative of Article 14 & 16 of the Constitution and the benefit of ALC was wrongly given to the candidates in District Doda. In terms of the original Advertisement Notification, 54 posts were reserved but in the selection list, only 51 candidates have been selected, as such, the selection of the respondent to the post of Class-IV District Doda issued vide notification dated 21.10.2011 should be quashed and the respondent should be directed to conduct the interview of the petitioners.

4. Respondents have filed their objections and have stated that in terms of Government order No.42-GAD of 20096 dated 09.01.2006, 90 posts of Class-IV were advertised by the Selection Committee vide Advertisement Notice No.01 of 2006 dated 15.03.2006 and subsequently, in terms of SRO-294 of 2005 dated 21.010.2005, category-wise details of the posts advertised above, were modified by the Selection Committee by issuing a Corrigendum to the earlier Advertisement Notice vide No.PA (P) 2K6/5682-5702 dated 31.03.2006 as per the details given below:-

5. It is submitted by the respondents that in response to the Advertisement Notice dated 15.03.2006, 26,599 applications were received but 877 candidates were called for viva voce after shortlisting them, on the basis of marks obtained by them in different academic examinations by the Selection committee.

Open

-

51

SC

-

08

ST

-

09

RBA

-

18

SOC

-

01

ALC

-

03

Total

-

90

6. The list of short listed candidates was published in 'Daily Excelsior' and 'The Kashmir Times' on 10th March, 2010 inviting objections from the aggrieved within a period of 15 days. In response to the said publication, 123 candidates filed their objections and after considering all the received objections, 99 candidates were found genuine and objections of 24 candidates were rejected by the Selection Committee and accordingly, after updating the short list, list of 952 candidates who were called for interview, was published in Daily Newspaper 'the Uddaan' on 09.05.2010, in 'Daily Excelsior' on 10.05.2010 and in 'The Kashmir Times' on 14.05.2010 and the schedule of the interview was fixed from 16.08.2010 to 25.08.2010. Thus, after completing the process of interview, 90 candidates were selected by the Selection Committee on the basis of their merit and their performance in the viva voce. Respondent further submit that the list of the selected candidates was issued by the Selection Committee under the signatures of Chairman (Deputy Commissioner) Doda and the Member (Nodal Officer), Addl. Deputy Commissioner, Doda on 21.10.2011. The cut off points of last selected candidates in each category are as follows:-

Open Merit

-

57.29

RBA

-

54.73

SC

-

51.82

ST

-

50.20

SOC

-

56.04

7. The marks obtained by the petitioners i.e., academic as well as viva-voce i.e., total marks obtained by the petitioners was as under:-

Name of petitioner

Academic Points

Points of Viva

Total Points

Verinder Kumar

29.01

19.167

48.17

Salak Ram

28.54

19.667

48.21

Rakesh Chander

31.79

19.00

50.79

8. Since petitioners' merit was lesser than the last selected candidates in each category, as such, they could not be selected for Class-IV post in terms of the said selection process. Respondents further submit that the petitioners had not filed any objection to the list of short-listed candidates and were not aggrieved of the criteria adopted for selection and as such, having taken a chance in the selection process have turned around and challenged the same after they have

failed to make the grade. It is also stated that the Selection Committee have made the selection in complete transparent manner after following the

Reservation Rules, as such, the petitioners' contention, being illegal, arbitrary and without any merit, is required to be set aside. Since the merit obtained by petitioners was lesser than the last selected candidate, therefore, they could not be selected.

9. Hon'ble Supreme Court in 2016 (1) SCC 454 titled Madras Institute of Development Studies & ors. versus K. Sivasubramaniyan & ors. in paragraph Nos.19 & 24, has held as under:-

21. In Dr. G. Sarana vs. University of Lucknow & Ors., (1976) 3 SCC 585, a similar question came for consideration before a three Judges Bench of this Court where the fact was that the petitioner had applied to the post of Professor of Athropology in the University of Lucknow. After having appeared before the Selection Committee but on his failure to get appointed, the petitioner rushed to the High Court pleading bias against him of the three experts in the Selection Committee consisting of five members. He also alleged doubt in the constitution of the Committee. Rejecting the contention, the Court held:-

"15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in Manak Lal's case where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting:

"It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point."

24. In the case of Ramesh Chandra Shah and others vs. Anil Joshi and others, (2013) 11 SCC 309, recently a Bench of this Court following the earlier decisions held as under:-

"In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the

Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."

10. This Court as well as Hon'ble Supreme Court in 2013 (11) SCC 309 titled Ramesh Chandra Shah & ors. versus Anil Joshi & ors. has held as under:-

"The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted."

In Paragraph 24 of the said judgment, it has been further held as under:-

"24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."

11. Thus, the petitioners having chosen not to object to the short-listed criteria which was notified vide Notification No.DIPL-9550 dated 11.03.2010 and having accepted the same cannot turn around and challenge the same after selection process is complete and the candidates have been appointed and joined on the said posts.

12. For the reasons mentioned hereinabove and in view of the fact that the petitioners have secured lesser merit than last selected candidate in each category, this petition is without any merit and is accordingly, dismissed alongwith connected IA(s) if any.