
(2019) 04 J&K CK 0122

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 957 Of 2016, IA No. 01 Of 2016, 01 Of 2018

Vikas Sawhney & Ors

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision : 10-04-2019

Acts Referred:

Jammu And Kashmir Education (Gazetted) Service Recruitment Rules, 1992 — Rule 13

Citation : (2019) 04 J&K CK 0122

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Abhinav Sharma, F.A.Natnoo, S.S.Ahmed

Final Decision : Dismissed

Judgement

1. The Jammu and Kashmir Public Service Commission invited applications for various disciplines of Lectures (10+2) vide Notification No. 09-PSC (DR-P) of 2016 dated 19.03.2016. Petitioners considering themselves eligible for the post of 10+2 Computer Science and Information Technology applied for both the posts. It is the case of the petitioners that they had earlier also applied for the said post for which applications were invited by the Public Service Commission in March, 2009 but they were not selected and aggrieved of the appointment of the others they filed SWP No. 1521/2010, which is still pending disposal.

2. The fresh applications were invited pursuant to Notification dated 19.03.2016 and were entertained, but the petitioners were not called for interview apparently considering them not eligible. The case of the petitioners is that they are eligible for both the posts because they possessed qualification of MCA issued by the Post Graduate Department of Computer Science and Information Technology, University of Jammu. That during the pendency of their writ petition, the University invited applications for 22 posts of lecturers in the discipline of Information Technology and four posts of lecturers (10+2) in the discipline of Information Practice and 37 posts of lecturers (10+2) in Computer Science.

3. Grievance of the petitioners is that respondent-Public Service Commission has rightly prescribed qualification for the post of lecturer (10+2) in Computer Science as Post Graduate Degree but the discipline of information technology is the qualification prescribed in the Master Degree in the said subject.

4. Since the respondents did not consider the Post Graduate Degree i.e. MCA eligible for the discipline of Information Practice and for the discipline of Information Technology even though separate subjects of Information Technology, no more exists since 2009, therefore, the Notification is bad.

5. The first ground of challenge given in ground (a) is extracted below:

"(a) That the impugned Advertisement Notification bearing No. 09-PSC (DR-P) of 2016 dated 19.03.2016, to the extent, it advertises and notifies the 22 posts of 10+2 Lecturer Information Technology separately, instead of including the aforesaid posts in the discipline of Information Practice is illegal, bad and unconstitutional and is required to be quashed, inasmuch as, J&K Board of School Education vide Notification No. F-Acad-Syll/CC-I(KD)/09 dated 16.11.2009 has on the recommendations of the National Curriculum Frame Work, 2005, developed and devised by National Council of Education Research and Technology has changed the subject of Information Technology to Information Practices in Higher Secondary Part-I (Class-11th), which was applicable from Session October-November from Session April-May, 2010 in summer Zone (Jammu Division). It is stated that at the level of Class-11th there are only two subjects i.e. Computer Science and Information Practice, whereas there is no subject of Information Technology. It is further stated that vide Subsequent Notification No. F(Acad-C)/S-Combination/XII/10 dated 04.12.2010 issued by J&K Board of School Education, the subject of Information Technology has been deleted at the level of Class-12th as well w.e.f Academic Sessions April-May, 2011 and again there are only two subjects i.e. Computer Science and Information Practices at the level of Class-12th, therefore, there is no subject of Information technology, which is required to be taught by a Lecturer (10+2) in Information Technology, as such, Advertisement impugned to the extent of Notifying 22 posts of Lecturer (10+2) in the subject of Information Technology separately and not including the same with the subject of information practice is unsustainable, as such, is required to be quashed and by issuance of writ of mandamus, respondents are required to be directed to delete 22-posts of Lecturer (10+2) from the discipline of Information Technology from impugned notification and to include the aforesaid post in the discipline of Information practice by advertising 26 posts of Lecturer (10+2) Information Practice."

6. The second ground is that the Recruitment Rules of 1992, the qualification for the post of lecturers (10+2) was only

Master's Degree in the relevant subject and the petitioners being in possession of three years Master's Degree which includes all the subjects of M.Sc. Computer Science and M.Sc Information Technology, which is replaced by Information

Practice, therefore, this notification is liable to be quashed.

7. Much emphasis in the petition has been given to the Advertisement Notice issued on 09.03.2009 (Annexure H) and the Service Writ Petition No. 1521/2010 filed by them, which according to them, is still pending. They have prayed for the following reliefs:

"to quash Notification No. 09-PSC (DR-P) of 2016 dated 19.03.2016, in so far as, it pertains to the advertisement of 22 posts of Lecturer 10+2 in the discipline of Information Technology in School Education Department and command the respondents to consider and treat the petitioner eligible for the post of Lecturer (10+2) in the discipline of Information Practice and further direct respondent No.2 to include 22 posts of Lecturer (10+2) advertised in the discipline of Information Practice by corresponding exclusion from Information Technology."

8. In the objections filed by the Public Service Commission, it has been pleaded that the writ petition is not maintainable because the petitioner do not possess requisite qualification of Master's Degree in Information Technology and have sought a direction that Master's Degree in Computer Application be declared equivalent to the requisite qualification, which is not permissible under law. It is further stated that in the absence of any provisions in the recruitment rules, no such relief can be granted.

9. After having heard learned counsel for the parties and considering the Jammu and Kashmir School Education (Gazetted) Service Recruitment Rules, 2010, this petition is not maintainable because the qualification prescribed for the post of Lecturer in Information Technology is M.Sc Information Technology from the recognized University as given in Schedule II. These Rules were notified under SRO 481 dated 30.12.2010.

10. The petitioner has been emphasizing that the Jammu and Kashmir Education (Gazetted) Service Recruitment Rules, 1992 which have since been repealed as is evident from Rule 13 of these Recruitment Rules. So no reference can be made to the 1992 Rules since the advertisement notice is strictly in accordance with the provisions of the Jammu and Kashmir School Education (Gazetted) Service Recruitment Rules, 2010 and the petitioners cannot expect that the Public Service Commission would alter the qualification prescribed for the post of Lecturer (10+2) in the Information Technology. The Public Service Commission is a Recruiting Agency for the gazetted service and they have to proceed strictly in accordance with the Recruitment Rules. The petitioner knew the rule position and ought to have agitated for its modification as the ground that qualification prescribed was against the Syllabus as alleged by them. Such question can only be decided by the academic department of the University and not by the Recruiting Agency. Since the existing rule does not permit the Public Service Commission to modify the qualification. The respondent No.2 submitted that in terms of Court Order dated 06.05.2016, the petitioners were allowed to participate in the written test held on 17.12.2017 and has placed on record

communication dated 04.12.2018 with regard to filling up the post of Lecturer (10+2) Information Technology in the School Education Department. In terms of the said communication, they have informed that out of ten petitioners, only three petitioners, namely, Vikas Sawhney, Anuj Sharma and Vijay Kumar, had filled online applications against the post of Lecturer (10+2) in the Information Technology. Five petitioners, namely, Vinod Kumar, Kumar Sourabh, Amit Sanotra, Prakriti Sharma and Rohit Syal had applied to the post of Lecturer (10+2) Computer Science and not to the post of Lecturer (10+2) Information Technology. Remaining two, namely, Farooq Ahmed and Vikas Kumar had not applied either against the post of Information Technology or Computer Science, thus, out of eight petitioners, two petitioners, namely, Vikas Sawhney and Anuj Sharma, participated in the written test held for the post of Lecturer (10+2) Information Technology on 17.12.2017. However, they could not obtain the requisite merit under the relevant category point of view, as such, could not be intervened.

11. In view of the above, this writ petition is without any substance and is, accordingly, dismissed.