
(2020) 02 J&K CK 0077

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 1778 Of 2018, IA No. 01, 02 Of 2018

Waseem Raja

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 27-02-2020

Acts Referred:

Citation : (2020) 02 J&K CK 0077

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : N.D. Qazi, Vishal Bharti, Monika Thakur, S.S. Nanda, M.P. Sharma

Final Decision : Dismissed

Judgement

1. Vide Advertisement Notification dated 09.03.2018 issued by the respondent No.4, applications were invited from the eligible candidates for filling up

three posts of Orderlies/Chowkidars in the Social Welfare Department, District Cadre, Doda with the following break up.

(i) Open merit : 02

(ii) RBA : 01

2. In the Advertisement Notification, it was indicated that the posts notified were meant for male candidates. This, however, was later on corrected by

issuing a Corrigendum and the notified posts were thrown open for both male and female candidates. The petitioner, respondent No.6 and few others

responded to the Advertisement Notification and claimed consideration under the reserved category of Resident of Backward Area (for short

â??RBAâ??). With a view to make selection, the Selection Committee comprising of following members was constituted:-

1. District Social Welfare Officer : Chairman

2. DFO Forest Div., Doda : Member

3. SDM, Gandoh : Member

4. Chief Horticulture Officer, Doda : Member

3. The Selection Committee conducted the selection by adopting the following criteria:-

Basic qualification (Matric) : 70 points

Maximum qualification (12) : 10 points on pro rata basis

Viva voce : 20 points.

4. On the basis of the merit, the respondent No.6, was selected under the RBA category and the petitioner, who was next in the order of merit was

put in the wait list. It is this selection of the respondent No.6 as Class IV made by the Selection Committee, which is impugned in this petition by the

petitioner. The petitioner has not challenged either the constitution of the Selection Committee or the selection criteria adopted for making selection.

He is, however, aggrieved of the participation of the respondent No.4 in the selection process primarily for two reasons viz. (a) that the respondent

No.5, who was the then District Social Welfare Officer, Doda and the Chairman of the Selection Committee was a close relative of respondent No.6.

It is claimed that the respondent No.6 is niece of respondent No.5; and (b) that the respondent No.5 had ceased to be a District Social Welfare Officer,

District Doda with his transfer vide Govt. Order No.1237-GAD of 2018 dated 04.08.2018 and, therefore, was not competent to chair the Selection

Committee and conduct the interviews of the candidates.

5. The respondent No.1 has filed detailed objections and has opposed, vehemently, the writ petition. The respondent No.1 has, in its objections,

explained the manner in which the selection was conducted and submits that the respondent No.6 was selected in the RBA category, for the reason

that amongst the RBA candidates he had highest merit. The respondent No.1 has placed on record tabulation indicating the manner in which the

academic merit and the viva-voce merit has been computed. The respondent No.6 has got 71.1 marks in the selection process whereas the petitioner

with his total tally of 69.4 marks is the candidate next in the order of merit. With regard to the allegation of the petitioner that at the time of viva-voce,

the respondent No.5 had ceased to hold the office of District Social Welfare

Officer, Doda, it is submitted by the respondent No.1 that vide Govt.

Order No.1237-GAD of 2018 dated 04.08.2018, the respondent No.5 who was figuring at S.No.84 in the aforesaid Govt. Order was to move to the

transferee department after a gap of 5 days from the date of the issuance of the said order. However, Director, Social Welfare Department, Jammu

vide his letter No. DSWJ/Estt/Gaz/12226/18 dated 06.08.2018 requested the Secretary to the Govt. Department of Social Welfare, J&K for retention

of the respondent No.5 in the Department. It is, thus, explained that, no doubt, on the date of interview, the respondent No.5 stood transferred, but, had

been retained in the office on the request of the Director Social Welfare Department, Jammu.

6. The respondent No.6 whose selection is under challenge in this petition too has filed her objections. The respondent No.6 has defended her

selection on the lines, it is sought to be defended by the respondent No.1. It is submitted that the selection was made by a Committee of five members

of which respondent No.5 was the Chairman. It is submitted that the petitioner too is related to respondent No.5 in the similar manner and same

degree in which respondent No.6 is related. It is specifically pleaded by the respondent No.6 in paragraph No.3 of the objections that the petitioner is

son of Shri Muzaffar Hussain Tantray's sister, namely, Ghulam Begum and Shri Muzaffar Hussain Tantray is none other than father of

respondent No.6. The relationship of the respondent No.6 with respondent No.5 is, however, denied. It is submitted that the respondent No.6 is not the

real niece of respondent No.5, but, is remotely related to him.

7. Heard learned counsel for the parties and perused the record.

8. From the sequence of the events that unfold on perusal of the record, it is clear that Mr. Mohd Ashraf Wani was the District Social Welfare

Officer and the Chairman of the Selection Committee constituted for making selection of Class-IV in the Department of Social Welfare, District

Cadre, Doda at the time of issuance of the Advertisement Notification No DSD-14 of 2018 dated 09.03.2018. As noted above, initially the posts of

Orderlies/Chowkidars were thrown open to male candidates only, but, later on the respondent No.5 issued the Corrigendum vide his No. DSD/Estt-

18/2225-27 dated 15.08.2018 and made both male and female candidates eligible for the notified posts of Class-IV. It is also not in dispute that

amongst others, both the petitioner and respondent No.6, who are admittedly cousins, applied for the notified posts and sought consideration under the RBA category.

9. From the Advertisement Notification and the Corrigendum issued, it is abundantly clear that it was Mohd Ashraf Wani the then District Social

Welfare Officer, Doda who issued these notifications, but, the petitioner did not raise any objection or made any protest against the participation of

respondent No.5 as a Chairman of the Selection Committee. After the receipt of the application forms and their scrutiny, the merit list of the

shortlisted candidates was published in the Daily Excelsior newspaper in its issue dated 13.07.2018 for inviting objections from the aggrieved

candidates, if any. This shortlist was also issued when the respondent No.5 was officiating as Chairman of the Selection Committee. Since the name

of the petitioner appeared in the shortlist and, therefore, he had no grievance even at that point of time. The date of interview was fixed on 27.08.2018

and, accordingly, interview call letters were circulated to all the shortlisted candidates including the petitioner and the respondent No.6. The interview

Notification was also published in the State Times in its Edition dated 20.08.2018. The petitioner had been called for the interview and, therefore, had

no grievance with regard to the manner in which the selection process was proceeded nor had he any problem with the participation of the respondent

No.5 in the selection process. It was only when the selection process was concluded, on the completion of viva-voce on 27.08.2018, provisional

selection list was prepared and sent to the District Information Officer, Doda for its publication vide his office letter No. DSD/Estt-18/1051 dated

27.08.2018 that the petitioner came to know that he has not been selected and instead under RBA category candidate respondent No.6 has been

selected, he made a detailed representation to the Deputy Commissioner, Doda on 28.08.2018 in which inter alia claimed that he had earlier also made

a representation against the participation of respondent No.5 in the selection process on 01.08.2018. The representation claimed to have been made by

the petitioner on 01.08.2018 is appended with CM No. 02/2018 filed by the petitioner along with this writ petition. The representation is written in Urdu

and does not bear any receipt from the office of Deputy Commissioner, Doda. This representation, on the face of it, is generated by the petitioner to

justify his participation in the selection process and his silence till the conclusion thereof. Whereas the communication of Chief Planning Officer, Doda

dated 28.08.2018 appended with the writ petition as Annexure-G would make it further clear that the petitioner swung into action only on 28.08.2018

when the select list came to be published and the petitioner came to know that he has not been selected. Such conduct of the petitioner alone would

disentitle him from claiming any relief from this Court by invoking its extraordinary equitable jurisdiction. The petitioner may be technically correct that

with the transfer of respondent No.5 from the office of District Social Welfare Officer, Doda, had ceased to be the Chairman of the Committee and

therefore, could not have proceeded with the selection, but, it is equally true that he was retained in the office pursuant to a request made by the

Director, Social Welfare Department, Jammu for some time and was admittedly not replaced by new incumbent. The allegation of the petitioner that

the respondent No.6 is, somehow, related to the respondent No.5 may be correct, but, the fact that the petitioner who is first cousin of the respondent

No.6 would place him also in the same position. It is, precisely, because of this reason that the petitioner never raised a protest against the participation

of the respondent No.5 in the selection process till he came to know that he has not been selected. That apart, I have also gone through the merit

sheet placed on record by the respondent No.1. So far as the academic merit is concerned, the petitioner has got 56.8 points whereas respondent No.6

has got 56.3 points. The academic merit of the two is, thus, almost same. So far as viva-voce is concerned, all the five members of the Selection

Committee have separately evaluated the candidates. As per the evaluation of the members, the petitioner and respondent No.6 have been awarded in

the following manners:

Petitioner:

Member No.1 : 12

Member No.2 : 17

Member No.3 : 10

Member No.4 : 13

Member No.5 : 11

Total : 63

Respondent No.6:

Member No.1 : 10

Member No.2 : 17

Member No.3 : 16

Member No.4 : 15

Member No.5 : 16

Total : 74

In the viva-voce, out of 20 points, the petitioner has been awarded 12.6 points whereas respondent No.6 has been awarded 14.8 points.

10. From the perusal of the comparative merit of the petitioner and the respondent No.6, it is clearly discernible that the participation of respondent No.5 in the selection process has not materially affected outcome of the selection. The respondent No.5 has awarded 16 points out of 20 in the viva-voce to respondent No.6 and 11 points to the petitioner. Even if the petitioner is awarded 16 points by the respondent No.5, he would still lag behind respondent No.6 and would not come in the selection zone.

11. Viewed from any angle, this Court does not find that the selection of respondent No.6 is vitiated by bias or for some other reason. That apart, participation of the petitioner in the selection process without any protest would itself disentitle him to question the selection process. The selection process right from its initiation till the date of interview was not objected to by the petitioner and if that be the position, the petitioner cannot be allowed to question the selection process. Legal position in this regard is well settled and needs no reiteration. Equally fallacious and misconceived has been found the plea of the petitioner that the selection of the respondent No.6 was vitiated by bias which the respondent No.5 Chairman of the Selection Committee held in favour of respondent No.6.

12. For the foregoing reasons, I find no merit in this petition. Accordingly, the same is dismissed along with connected CM(s).