

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

SWP no. 371/2005
CMP nos. 1295/2005 & 387/2005

Date of Decision: **19.02.2009**

Gagan Pratap Singh & Ors. v. State & Ors.

Coram:

MR. JUSTICE J.P.SINGH, JUDGE.

Appearing Counsel:

For Petitioner(s) : Mr. Sunil Sethi, Sr.Advocate with
Ms. Veenu Gupta, Advocate.

For Respondent(s): Mrs. Seema Shekher, AAG for R-1.
Mr. F.A.Natnoo, Advocate for R-2 & 3.
Mr. P.N.Raina, Advocate for R-4 & 5.

i) Whether to be reported
in Press/Journal/Media: Yes/No.

ii) Whether to be reported
in Digest/Journal : Yes/No.

1) Petitioners have filed this writ petition seeking quashing of
Notification no. 7 PSC of 2003 of June 27, 2003 in so far as it
invites eligible candidates for selection against the posts of
Lecturer Grade-I Travel and Tourism (Non-Engineering) in the
Higher and Technical Education Department.

2) The grievance of the petitioners, in a nut-shell, is that the
posts required to be filled up by promotion by the respondents,
had been diverted to be filled up by direct recruitment, which
course, according to them was impermissible, in that, it would
prejudice the petitioners who are stated to have been engaged, on
contractual basis, for serving in the Government Polytechnic

College. It is additionally pleaded by the petitioners that the Jammu and Kashmir Technical (Gazetted) Service Recruitment Rules, 2002 were likely to be enforced and in such an event, they would become entitled to compete for the posts against the direct recruitment quota; the qualifications prescribed in the notification impugned in the writ petition for the diverted direct recruitment posts, being different from those prescribed under the rules, would render the impugned notification unsustainable.

3) Petitioner ~~v~~ learned counsel Mr. Sethi submits that the qualifications for the posts required to be filled up by the State Government, are in law, required to be prescribed by the State Government, the employer, and the qualification prescribed in the impugned notification, by the Public Service Commission, the Selection Authority, was an unwarranted act of the Commission which renders the impugned notification invalid. He therefore seeks quashing of the notification.

4) Justifying the notification impugned in the writ petition and *inter alia* questioning the maintainability of petitioners ~~v~~ writ petition, it is stated by the respondents that petitioner ~~v~~ grievance that the advertised direct recruitment posts were required to be filled up by promotion, was misconceived in that, posts in the promotion quota were available only to those permanent members of the service who belonged to Class IV category-B of the service with five years experience in the category, and the petitioners who were neither the members of the service nor belonged to Class IV

category-B of the service had thus no claim over the promotion quota posts.

5) Petitioners are stated to have applied for the advertised posts. They were, however, found ineligible to compete for the posts as they did not possess the requisite prescribed qualification. Having maintained silence for quite some time, the petitioners, it is stated, are not entitled to invoke the extra ordinary writ jurisdiction of the Court.

6) It is stated by the respondents that in order to upgrade the Polytechnic Colleges in the State, the Government of India had sanctioned project under World Bank Assistance Tech-Edu.III whereunder new courses had to be introduced to the four Polytechnics of the State. Teaching and supporting staff had thus been sanctioned vide Government Order No. 107-Edu (tech) of 2001 dated 24.09.2001 for four project Polytechnics. Most of these courses are stated to be new and there was no feeding cadre wherefrom the promotions could be made. These posts were accordingly decided by the Government to be filled up by direct recruitment.

7) I have considered the submissions of learned counsel for the parties and find the petitioners writ petition to be utterly misconceived, in that, having not yet become the permanent employees of the State Government and the members of the Polytechnic service, the petitioners have no enforceable individual right to maintain the writ petition because they do not belong to Class IV Category-B of the service. Even otherwise, the

petitioners have no right to project the cause of the promotees by invoking extra ordinary writ jurisdiction of the Court which may be invoked only in those cases where there is violation of any fundamental, legal or statutory right.

8) That apart, having come to the court with unclean hands without disclosing in the writ petition as to the rejection of their candidature by the Public Service Commission, the petitioners may not be entitled to equitable writ jurisdiction of this court.

Even otherwise, prescribing of higher qualification than the one appearing in the rules, and that too for the posts advertised vide impugned notification for the posts which had to survive during the life of the project under World Bank Assistance Tech-Edu. III Scheme, cannot be faulted by the petitioners.

9) For all what has been said above, I do not find any merit in petitioners' writ petition which is, accordingly, dismissed with costs quantified at Rs.5000/-.

Interim order issued by the Court on April 15, 2005 is, accordingly, vacated.

(J.P.Singh)
Judge

JAMMU:
19.02.2009
Pawan Chopra