

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

SWP No. 2041/2006

Date of Decision: **17.04.2009**

Sonam Joldan & anr. Vs. J&K Academy of Art, Culture
& Languages & Ors.

Coram:

MR. JUSTICE J.P.SINGH, JUDGE .

Appearing Counsel:

For Petitioner(s) : M/s S. K. Shukla & Tashi Rabstan,
Advocates.

For Respondent(s): M/s Seema Shekhar, AAG & P. N.
Goja, Advocate.

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| i) | Whether to be reported in Press/Journal/Media: | Yes. |
| ii) | Whether to be reported in Digest/Journal : | Yes. |

Jammu and Kashmir Academy of Art, Culture and Languages, Srinagar, ('the Academy', for short), issued its Employment Notice No. ADM-E/12/2003-04/3099-3113 dated 22nd of September, 2003, through its Secretary, inviting applications from the Permanent Residents of Jammu and Kashmir State, for selection against vacant posts in the Academy, on its, Executive, Cultural, Teaching, Library, Technical and Editorial Cadres. The posts so advertised included

two posts of Cultural Officer for Leh and Kargil Office, in the Cultural Cadre. The qualification prescribed therefor was:

1. Post Graduation from a recognized University.
2. Thorough knowledge of Cultural History of J&K.
3. Adequate knowledge of two regional languages.
4. Thorough knowledge of Folk performing art traditions of the State.

Applications accompanied by a postal order of Rs.50/-, for the posts including those of the Cultural Officer, were required to reach the Secretary Jammu and Kashmir Academy of Art, Culture and Languages, Lal Mandi, Srinagar along with attested copies of the:

1. Academic and Professional qualifications;
2. Age and health;
3. State Subject;
4. Experience

on or before 31st October, 2003.

Those in Government Service, had to route their applications through proper channel.

Out of forty four candidates found eligible to seek consideration for the posts of Cultural Officers, only seventeen appeared for the interview on 20th of September, 2006 at Cultural Complex,

Leh before the Selection Committee constituted by the President of the Academy, the Chief Minister of the State, which comprised of the following members:

- | | | |
|----|--|----------|
| 1. | Secretary Academy | Chairman |
| 2. | Sh. Zaffar Ahmad Addl. Secretary to Chief Minister | Member. |
| 3. | Sh. T. R. Sharma, Addl. Secretary Academy. Jammu | Member. |
| 4. | Mr. Zaffar Iqbal, Addl. Secretary Academy Srinagar | Member. |

Dr. Janyang Gailson, Lecturer Central Institute of Buddhist Studies was co-opted by the Committee as Expert on the Selection Committee.

The Committee, after evaluating the merit, suitability, experience and qualification of the candidates, recommended a panel of four persons for appointment to the post of Cultural Officer, Leh.

Shri Tsewang Paljore, selected at Serial No. 1 of the panel was, accordingly, appointed as

Cultural Officer, Leh vide Academy Order No. 72 of 2006 dated 23-11-2006.

Sonam Joldan and Sonam Chosjore, who too had appeared seeking consideration for selection against the Advertised Post before the Selection Committee, have filed this writ petition seeking quashing of Tsewang Paljore's selection and appointment, besides a command to the Academy to appoint them as Cultural Officers.

Questioning Tsewang Paljore, Respondent No. 6's selection and appointment as Cultural Officer, Leh, the petitioners' say that respondent no.1 and its Selection Committee, had violated the fundamental right of Equality before the Law and equal protection of the laws by converting their merit into demerit, adopting arbitrary methodology for selection, rendering the whole selection process unfair and a mere eye wash, designed to favour respondent no. 6.

Petitioner No. 2 is stated to be a Gold Medalist, possessing M.A and M.Phil Degrees and presently engaged in Ph.D in Political Science,

whereas petitioner No.1 is stated to have done his Masters Degree from Delhi University, besides possessing Ph.D in “Ladakh’s Traditional Ties with Buddhist Tibet” from Jawahar Lal Nehru University 2006 and M.Phil in “Buddhist Tibet Cultural Ties with Ladakh and Mustang”. He is stated to have published papers titled Buddhist Tibet Cultural Ties with Ladakh Tibetan Review, November, 2003, two articles titled “Relationship between Ladakh and Buddhist Tibet Trade and Pilgrimage” and “Ladakh Traditional Ties with Buddhist Tibet, Monastic Organization and Monastic Education as a sustaining factor” in Tibet Journal. He is further stated to have presented paper on **Ladakh/Tibetan Cultural ties** in the 10th International Association for Ladakh Studies, held in Oxford-2001 besides participating in 2006 World Youth Care for Tibet-Taiwan Forum.

Projecting his activities in the Sports Field, petitioner No.1 is stated to have been awarded National Awards i.e. Three Gold Medals in Tenth

Junior and 8th Sub Junior National Archery Championship and also New National Record Holder in the XXXVI National Shooting Championship Competition held in 1993.

Petitioners have indicated, in the Rejoinder to their writ petition that the documents supplied by the Academy vide letter No. CA.PS/2006-2007/961 dated 16.02.2007 reveal that Tsewang Paljore, respondent No. 6, did not possess any additional qualification i.e. of possessing M.Phil or Ph.D Degrees and would possess only Masters Degree, and that too, with the 2nd Division. According to the petitioners, the three months Computer Course Certificate and Certificate of Diploma in Journalism produced by Respondent No. 6 could not be taken into consideration by the Selection Committee because those had been obtained after the cut-off date fixed in the Notification and even otherwise would not qualify the respondent for the award of marks for possessing Additional qualification according to the criteria fixed by the Selection Committee.

Petitioners have further indicated in their rejoinder as to how had the Selection Committee converted their merit into demerit in omitting to award them marks which they were entitled to, according to the criteria fixed for the purpose, and that the Selection Committee had allowed marks under the heads **additional qualification**, and **published works** to respondent No.6 which he was not otherwise entitled to, in terms of the criteria fixed by the Selection Committee. Elaborating their submissions, it is stated that respondent no.6 was not entitled to be awarded for the **published works** because he had NO published work to his credit when he had applied seeking consideration for selection. Awarding of 24 marks under this head to respondent No. 6, by the Selection Committee, was thus unwarranted and unjustified.

Perusal of the records made available by the Academy, and the material placed on the records by the parties to the writ petition, indicate that the criterion fixed for evaluating the merit and

suitability of the candidates, for selection, against the post of Cultural Officers, was as follows:

1. Qualification

10 Marks

(M.A. 1st Division 10 Marks 2nd Div. 8 Marks 3rd Div, 7 Marks)
2. Additional Qualification

10 Marks

(M. Phil, Ph.D, Degree (two years), Diploma one year)
3. Published work

10 Marks

(Book published)
4. Viva-Voce

50 Marks

(10 marks to each member)

The merit of the petitioners and respondent No. 6 which the Academy’s Selection Committee had evaluated, has been indicated in Academy’s Objections/Counter Affidavit as follows:

| Name of the candidate | Qualification 10 marks | Additional qualification 10 marks | Published works 10 marks | Viva voce 50 (10 marks for each member) | Total |
|--------------------------------------|---------------------------|--------------------------------------|-----------------------------|--|-------|
| Sonam Jaldon (Petitioner No. 1) | 35 | 24 | 5 | 30 | 94 |
| Tsewang Paljor (Respondent No. 6) | 40 | 26 | 24 | 41 | 131 |
| Sonam Chosjor (Petitioner No. 2) | 40 | 13 | 4 | 13 | 70 |

Perusal of the records further indicates that rather than evaluating the merit of candidates out of 10 marks earmarked for, Basic Qualification, Additional Qualification and Published Works, the Academy had taken the sum total of the

evaluation made by each member of the Selection Committee under these heads. This error, however, may not affect the determination of the issue which falls for consideration in this petition as to whether or not the selection conducted by the Academy for the post of Cultural Officer was valid?, for the evaluation so made can be converted into requisite evaluation of each candidate out of the total marks earmarked for such evaluation, by dividing the evaluation of the Committee, by five.

When so done, the merit of the candidates relevant for the purpose of this petition would be as follows:-

| Name of the candidate | Qualification 10 marks | Additional qualification 10 marks | Published works 10 marks | Viva voce 50 (10 marks for each member) | Total |
|--------------------------------------|---------------------------|--------------------------------------|-----------------------------|--|-------|
| Sonam Jaldon (Petitioner No. 1) | 7 | 4.8 | 5 | 30 | 46.8 |
| Tsewang Paljor (Respondent No. 6) | 8 | 5.2 | 4.8 | 41 | 59 |
| Sonam Chosjor (Petitioner No. 2) | 8 | 2.6 | .08 | 13 | 24.4 |

Some more facts, appearing from the records of the Academy, need to be noticed here.

Although the Selection Committee had adopted a specific criteria for evaluating the merit and awarding marks to the candidates for acquisition of Minimum prescribed qualification, Additional qualification, etc., yet rather than following the laid-down criteria, each member had awarded marks to the candidates for Minimum prescribed qualification, Additional qualification etc. according to his own assessment, which action of theirs is incomprehensible, for, after laying down the criteria for awarding ten marks to those who had secured 1st Division in the prescribed qualification of Post Graduation, eight marks to those who had acquired Post Graduation with 2nd Division and seven marks to those who were placed in the 3rd Division and likewise, ten marks on account of having acquired additional qualification to only those who were holding M.Phil, Ph.D, Degree with two years or Diploma with one year, no discretion was left to the members to assess the merit of the candidates, according to their whims.

The marks awarded by each member to the petitioners and the respondent under the above referred two heads, too differ, and arbitrary approach appears to have been adopted by the members in awarding marks under these two heads to the candidates thereby hinting at arbitrary, irrational and unfair approach of the members of the Selection Committee in assessing the merit of the candidates. One of the members of the Selection Committee had gone to the extent of even omitting to award any marks to petitioner no.1 for his Additional qualification.

Records further indicate that respondent No.6 did not possess any Additional qualification at the time when he had applied for consideration against the advertised post, and had produced documents evidencing acquisition of Additional qualification of a three months Basic Computer Course at Leh on 31st June, 2005 from SIPA COMPUTER CENTRE and Post Graduate Diploma in Journalism issued on 25th May, 2004 by MANAGEMENT STUDIES PROMOTION INSTI-

TUTE, NEW DELHI, during the currency of the Selection Process BUT admittedly much after 31st October, 2003, the date prescribed as such in the advertisement notice, for receipt of testimonials.

In view of the above mentioned factual position emerging from the records, it becomes apparent that the members of the Selection Committee had failed to follow the laid-down criteria for awarding marks to the candidates for possessing Basic qualification, Additional qualification and Published work, to assess their merit and suitability for the advertised post. Such course adopted by the Selection Committee in not following the laid-down criteria for assessing the merit of the candidates, in the absence of any justifiable cause for deviating from the laid-down criteria, projected during the hearing of the petition, is nothing but stark arbitrariness.

The action of the Selection Committee in taking into consideration the qualifications acquired by respondent No.6 after the cut-off date of 31st October, 2003 and awarding marks to him

for such qualifications, without providing any opportunity to other candidates of referring to their Additional qualifications, if any, possessed during the currency of the Selection Process, offends Article 14 of the Constitution of India.

Taking into consideration the biased approach of the Selection Committee in evaluating respondent No.6's merit against the laid-down criterion, and awarding him marks much more than the one which he would have been entitled to in terms of the criterion, and omitting to award marks to the candidates, which they were entitled to, in terms of the laid-down criterion, clearly demonstrates unfair and arbitrary approach of the Committee, in assessing the merit of the eligible candidates and preparing the panel of candidates for selection against the post of the Cultural Officer, Leh leading to the issuance of Academy Order No.72 of 2006 dated 23.11.2006 appointing respondent No.6 as Cultural Officer, Leh.

For all what has been said above, Tsewang Paljor, respondent No.6's Selection, found to be in

violation of the laid-down criteria, is held to be arbitrary and in violation of Article 14 of the Constitution of India.

The Writ petition, therefore, succeeds, and is accordingly allowed quashing Academy's Selection Panel for the post of Cultural Officer, Leh and setting aside the Selection and Appointment of Tsewang Paljor, respondent No.6 against the post of Cultural Officer, Leh notified for Selection by the Jammu and Kashmir Academy of Art, Culture and Languages, Srinagar vide Employment Notice No. ADM-E/12/2003-04/3099-3113 dated 22nd of September, 2003.

Academy to bear the litigation expenses of the petitioners, which are assessed at Rs.10,000/-.

(J.P. Singh)
Judge

JAMMU:
17.04.2009
Pawan Chopra