

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

SWP no. 1487/2001 & CMP no. 1498/2001

SWP no. 2160/2001 & CMP no. 2241/2001

SWP no. 2518/2001

Date of Decision: **19.02.2009**

Devinder Singh	v.	State and Ors.
Bharat Bhushan Pangotra	v.	State and Ors.
Chander Bhushan Singh	v.	State and Ors.

Coram:

MR. JUSTICE J.P.SINGH, JUDGE.

Appearing Counsel:

For Petitioner(s) : Mrs. Surinder Kour, Advocate.

For Respondent(s) : Mr. F.A.Natnoo, Advocate.

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

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

1) Petitioners in these three writ petitions seek quashing of respondent nos. 6 to 23's selection and appointment as Agriculture Extension Officer, made pursuant to Advertisement Notification No. PSC of 1997 of April 04, 1997 issued by the Jammu and Kashmir Public Service Commission (PSC, for short).

2) Respondents' selection and appointment has been questioned on the ground that besides ignoring the superior merit of the petitioners, the PSC had erred in interviewing even those who had failed to clear the Screening test devised by the Commission for short listing those who had applied seeking consideration for selection.

3) Justifying the selection of respondent nos. 6 to 23, the PSC says that on evaluation of the merit of the candidates who had appeared for the interview, the petitioners were found lower in merit to respondent nos. 6 to 23, their selection and subsequent appointment, was thus justified and legal.

4) Meeting the petitioners' plea that the Commission had erred in interviewing even those who had failed to clear the Screening test, the PSC says that the candidates who were possessing higher qualification of M.Sc Agriculture too had been called for interview regardless of their having not cleared the Screening test, in view of the decision of the Commission to exempt them from the requirement of clearing the Screening test.

5) Giving the details of the selection, the Commission says that it had received requisition from the State Government for selection of candidates against twenty (20) posts of Agriculture Extension Officers. These posts were accordingly notified for selection vide Notification no. 5 PSC of 1998 dated 04.04.1998, break up whereof was as indicated hereinbelow:-

a) Open Merit	-	11.
b) Residents of Backward Area	-	04.
c) Scheduled Caste	-	02.
d) Scheduled Tribe	-	02.
e) Actual Line of Control	-	<u>01.</u>
Total	-	20.

6) The Commission is stated to have received 512 applications. A screening test was thus conducted to short list the candidates. Thirty four (34) candidates against the Open Merit Category and twenty nine (29) against the Reserved Categories had cleared the Screening test.

7) Besides interviewing those who had cleared the Screening test, the Commission had interviewed thirty four (34) more candidates who possessed higher qualification and had been exempted from clearing the screening test. Out of these thirty four (34) candidates with higher qualifications than the prescribed qualification, Darmesh Vaid and Jatinder Kumar, respondent nos. 17 & 22 had obtained 65 marks each in the Screening test whereas the cut off in the Screening test was 78 marks.

8) During the course of hearing of these petitions, petitioners' learned counsel, Mrs. Surinder Kour restricted petitioners' challenge to the selection and appointment of respondent nos. 17 & 22 only, in view of the position emerging from the records indicating that petitioners' merit was lower than the selected candidates, and that too, on the ground that the Commission had erred in interviewing respondent nos. 17 & 22, who had failed to clear the Screening test.

9) Learned counsel submitted that after having failed to clear the Screening test, these respondents had lost their right to seek consideration for selection against the advertised posts of Agriculture Extension Officers.

10) Justifying the selection of these respondents, learned counsel for the PSC submitted that respondent nos. 17 & 22, possessing Degree of M.Sc Agriculture, a qualification higher than that of the prescribed qualification, were exempt from taking the Screening test in view of the provisions of Rule 40 of the Jammu and Kashmir Public Service Commission (Business and Procedure) Rules, 1980 and in that view of the matter they were entitled to appear in the interview to seek their consideration and selection against the advertised posts.

11) Learned counsel further submitted that even if the selection of respondent nos. 17 & 22 had to be considered invalid, the petitioners would not get any benefit, in that, there were thirty two (32) candidates who had secured higher merit, at the interview, than petitioner Chander Bhushan Singh (SWP no. 2518/2001), twenty two (22) candidates who were higher in merit to that of Devinder Singh (SWP no. 1487/2001) and fifteen (15) candidates who had been rated better by the PSC than Bharat Bhushan Pangotra (SWP no. 2160/2001), whose merit had been evaluated as 68.09,

75.08 and 79.31 respectively in the Open Merit Category whereas the cut off in the Category was 89.59.

12) I have considered the submissions of learned counsel for the parties in the light of merit position of the candidates appearing from the records of the PSC and the provisions of the Jammu and Kashmir Public Service Commission (Business and Procedure) Rules, 1980.

13) Petitioners having been adjudged lower in merit to the selected candidates by the PSC, cannot legitimately question their selection.

14) Selection of respondent nos. 17 & 22 too cannot be faulted in view of the provisions of Rule 40 of the Jammu and Kashmir Public Service Commission (Business and Procedure) Rules, 1980, in terms of the fourth proviso whereof candidates possessing higher qualification may be exempted by the Commission from the Screening test.

15) Exercising power under the fourth proviso, the Commission had invited thirty four (34) candidates including these two respondents to broaden the area of competition for selection.

16) I do not find any illegality in Commission's granting exemption to those possessing higher qualification than the prescribed qualification, to clear the Screening test.

Even otherwise, petitioners cannot have any legitimate grievance about their rejection because they

had availed of their right of consideration for selection and it was on the basis of their lower merit that they had not been found fit for selection and consequent appointment as Agriculture Extension Officer.

17) This apart, the merit of the candidates at the Screening test had, in terms of the Advertisement Notice not to weigh with the selectors at the time of the interview and in that view of the matter too, selection of respondent nos. 17 & 22 cannot be faulted.

18) For all what has been said above, I do not find any merit in these petitions which are, accordingly, dismissed.

(J.P.Singh)
Judge

JAMMU:
19.02.2009
Pawan Chopra