

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

**LPASW no. 46/2004
CMP no. 75/2004**

Date of Decision: 01.06.2010

Secretary J&K Academy of Art and anr

**vs.
Rajinder Nath and another**

Coram:

**Hon'ble Mr. Justice Dr. Aftab H. Saikia, Chief Justice,
Hon'ble Mr. Justice Sunil Hali, Judge**

Appearing Counsel:

For Appellant(s): Mrs. Seema Shekhar, Advocate.
For Respondent(s) : Mr. Sudershan Sharma, Advocate.

- i) Whether to be reported in Press, Journal/Media : Yes/No
ii/ Whether to be reported in Digest/Journal : Yes/No
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Per- Hali- J

Two posts of Assistant Instructor Vocal were advertised by the appellants on 06.08.2002, for which following qualifications were prescribed:-

1. B. Mus with not less than 55% marks from a recognized university in the concerned field.
2. Two years experience in the concerned field of having worked in a recognized institution.

Respondent no.1, writ petitioner, applied for the said post but his application form was rejected on the ground that he did

not have the requisite qualification of B-Music from a recognized University.

Claim of the writ petitioner was that he had passed out from Prayag Sangit Samiti, which qualification has been recognized by the Allahabad University, but despite that respondents did not interview him. After hearing learned counsel for the parties, the learned Single Judge, vide his judgment dated 25.11.2003, impugned in this appeal, directed the respondents to constitute a Special Selection Committee to determine the merit of the petitioner in accordance with the laid down criteria. The other part of the direction is that, if writ-petitioner was found to be eligible, he be appointed. It is under these circumstances the present appeal has been filed.

We have heard the learned counsel for the parties.

While substantiating his claim, the writ petition has placed reliance on a communication issued by the Allahabad University, stating that the course undergone by him in Prayag Sangit Samiti is recognized by the said University. It is also stated that Sangeet Prabhakar qualification is equivalent to B. A. Degree in Music for appointment as Demonstrators and accompanists in music. The findings recorded by the learned Single Judge is also to the extent that writ-petitioner is possessed of the degree in Sangeet Prabhakar, however, there

is no such record produced by the writ petitioner which indicates that he has done Sangeet Prabhakar from Prayag Sangit Samiti. All that has been produced before the writ Court are the Diploma certificates issued by Prayag Sangit Samiti, Allahabad, indicating that writ petitioner has passed diploma in Senior and Junior Examination from Prayag Sangit Samiti, Allahabad. There is no certificate appended with the writ petition indicating that petitioner has done Sangeet Prabhakar. In addition to the aforementioned certificates, writ petitioner has placed a marks certificate of 5th year stated to have been issued on 30.06.2001. All these certificates does not lead to this conclusion that they are equivalent to B-Music, which is the necessary qualification required for the post.

Reliance placed by learned Single Judge that the institute from where the qualification has been acquired by the writ petitioner, is recognized by University of Allahabad, does not lead to the conclusion that the qualification acquired by the writ petitioner is equivalent to B-Music. The writ petitioner was required to show that the qualification which he has acquired from Prayag Sangit Samiti, is equivalent to B-Music and he has obtained 55% marks in the said course. Merely stating that institute is recognized by Allahabad University does not fulfill the requirement of the qualification prescribed for the post.

Finding of the learned Single Judge that petitioner has secured 55% marks is also not correct. The writ-petitioner has placed on record marks certificate dated 20.06.2002 of the 6th year and the marks obtained by him are 164 out of 300, which is less than 55 % marks, as was the requirement for the post advertised. It, in itself will disentitle the petitioner from seeking consideration for the said post, even if it is assumed that writ petitioner has passed out the Sangeet Prabhakar from a recognized institute.

Before parting, learned counsel for the respondent wanted to place some documents on record, which he had failed to do at the time of filing of writ petition. These documents cannot be taken on record at this stage when the case has been finally heard, more so without notice to otherside.

We, therefore, allow this appeal, set aside the order of the learned Single Judge and, accordingly, dismiss the writ petition.

(Sunil Hali) (Dr. Aftab H. Saikia)
Judge Chief Justice

JAMMU:
01.06.2010.
Anil Raina, Secy.

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU:

Sir,

The judgments proposed by me in cases (1) LPASW no. 246/2004 titled UOI vs. Narinder Pal Singh and (2) LPASW no. 46/2004 titled as Secretary J&K Academy of Art Culture and Languages vs. Rajinder Nath and anr, are enclosed herewith for your lordships consideration.

With regards

Yours

(Sunil Hali)
Judge

Hon'ble Mr. Justice Dr. Aftab H. Saikia,
Chief Justice,
High Court of Jammu & Kashmir, Jammu.