

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 1144/2008, CMP No. 1679/2008  
SWP No. 1172/2008, CMP No. 1716/2008  
SWP No. 1354/2008, CMP No. 1095/2010,  
CMP No. 1935/2008, and  
SWP No. 1375/2008, CMP No. 1098/2010

Date of Order: 22.09.2011

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Ashok Kumar and ors.	Vs.	State and ors.
Balbir Singh and ors.	Vs.	State and ors.
Surjeet Singh	Vs.	State and ors.
Usha Devi and anr.	Vs.	State and ors.

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CORAM:

**MR. JUSTICE MUZAFFAR HUSSAIN ATTAR, JUDGE**

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Appearing Counsel:

For petitioner(s)	Mr. Nirmal Kotwal, Advocate & Mr. Ashok Sharma, Advocate
For respondents:	Mr. S. K. Shukla, Advocate

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Whether approved for reporting In digest/journal/media.	<b>Yes</b>
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**(Oral)**

The petitioners in these petitions possess matriculation qualification with technical qualification of C.P.Ed. It is submitted at the bar by the learned counsel for the parties that in terms of Jammu and Kashmir Educational Subordinate Services Recruitment Rules, 1979/1992 (for short Rules), the petitioners are eligible for seeking consideration for being selected/appointed on the posts of Physical Education Teachers.

The respondent-Board issued Notifications dated 28.12.2006 and 05.10.2007, whereby applications were invited from the eligible candidates for being considered for being selected/ appointed on the posts of Physical Education Teachers in different Districts. In the said notifications, the education qualification prescribed was 10+2 with C.P. Ed. The petitioners could not respond to the said notification for the reason that eligibility of qualification was provided as 10+2. The petitioners admittedly being matriculate, the education qualification prescribed under the said notifications did not synchronize with the eligibility qualification provided under the Educational (Subordinate Services) Rules of 1979/1992. One more notification bearing No. 06 of 2008 dated 28.05.2008 was issued by the Board, in which the respondent-Board prescribed the correct qualification viz. matriculation with C.P.Ed for the said post. The petitioners at that point of time had turned overage and, thus, in terms of the said advertisement notification did not file their applications seeking consideration for being selected/appointed on the posts of Physical Education Teachers. The petitioners were constrained

to file these writ petitions seeking a direction to the Government and its Authorities to relax the upper age limit in their favour in accordance with the Government Order with further relief that they be subjected to the selection process for the posts of Physical Education Teacher.

The Court while issuing notice, directed the respondents to entertain the applications of the petitioners for the post of Physical Education Teachers so as to enable them to participate in the process of selection. The petitioners were interviewed for being selected/appointed on the post of Physical Education Teacher in terms of Court order and not in their own right. Service Selection Board has made recommendations of the selected candidates to the Competent Authority in the Government and Competent Authority in the Government has issued appointment orders in favour of the selected candidates.

The respondent-Board alone has filed objections and the State has chosen not to file the same.

Heard learned counsel for the parties.  
Considered the matter.

Mr. Kotwal, learned counsel in SWP No. 1144/2008 referred to para 7 of the writ petition and submitted that it has been specifically pleaded that despite availability of posts of Physical Education Teachers, the Government/Competent Authority has not referred the same to the Service Selection Board as provided under Rule 12 of Rules of J&K Subordinate Services Recruitment Rules of 1992 (for short Rules of 1992). It is further contended that act of the Government and its Authorities is in breach of Rule 12 of Rules of 1992. Learned counsel submitted that Competent Authority was required to refer twice a year the available vacancies of Physical Education Teachers to the Board, but the same has not been done. Learned counsel submitted that in case Government had complied with the aforesaid Rule, the petitioners on the basis of eligibility and merit might have been selected/ appointed on the said posts. Learned counsel submitted that Government/Competent Authority by not complying with Rule 12 of 1992, has infringed the petitioners right to seek consideration for being selected/ appointed on the posts of Physical Education Teachers. It was submitted that in the peculiar facts

of the case grant of relaxation of upper age limit in favour of the petitioners requires to be given so as to enable the Service Selection Board to assess their merit and recommend the names of those petitioners, who must have secured the grade, to the Competent Authority for being appointed on the said posts.

Learned counsel appearing in SWP No. 1172/2008 supported the contentions raised by the learned counsel appearing in SWP No. 1144/2008 and other writ petitions. Learned counsel urged that it is the fault of the Government and its authorities that petitioners turned overage and thus, deprived them from seeking consideration for being selected/appointed on the post of Physical Education Teacher.

Mr. Shukla, learned counsel for the respondent-Board submitted that on the terms and conditions of the Advertisement notice issued in the year 2008, the petitioners who had already turned overage, were not eligible for being considered for the posts of Physical Education Teachers. Learned counsel also submitted that the petitioners have been subjected to the selection process in pursuance to the order

passed by the Court and not in their own right. Learned counsel submitted that mistake committed earlier has been rectified by the Government inasmuch as, it notified eligibility of qualification as Matriculation with C.P.Ed instead of 10+2 with C.P.Ed. The persons, who could not respond in the year 2006 and 2007, were given opportunity to file their applications. In pursuance to the said notification, a candidate having qualification of matriculation with C.P.Ed could seek consideration for being selected/ appointed on the post of Physical Education Teacher, provided he was within prescribed age limit at that point of time. Learned counsel submitted that the petitioners have failed to take the benefit of the decision of the Government and Service Selection Board, as such, they cannot seek relief, which has been sought in these writ petitions.

Illegal and anomalous situation was created by the Government as also by the Service Selection Board at the time when they issued notification in the year, 2006 and 2007. Qualification for the post of Physical Education Teacher was prescribed 10+2 with C. P. Ed instead of matriculation with C.P.Ed.

Serious mistake was thus committed by the Government and its authorities when they prescribed different eligibility qualification other than the one prescribed in the statutory Rules. The petitioners, who were within prescribed age limit in the year 2006 and 2007, were prevented to seek consideration for being selected/appointed on the post of Physical Education Teacher. It is true that subsequently in the year, 2009 the mistake was sought to be rectified. Mr. Shukla submitted that notification dated 6.2.2009 was given wide publication by publishing the same in all daily newspapers.

Para 7 of SWP No. 1144/2008 has not been controverted. It is specifically pleaded that despite availability of the post of Physical Education Teacher, the posts were not referred to the Service Selection Board. Rule 12 of J&K Subordinate Service Recruitment Rules, 1992 occupying the field at the relevant point of time provided that the Administrative Department concern shall refer all the vacancies in the subordinate services to the Board by 15<sup>th</sup> January of every year strictly in accordance with

SRO 166 of 2005 dated 14<sup>th</sup> January, 2005. Rule 12 is reproduced as under:-

1. *"The Administrative Department concerned shall refer all the vacancies in the subordinate services to the Board by 15<sup>th</sup> January of every year strictly in accordance with SRO 166 of 2005 dated 14<sup>th</sup> January, 2005, as amended from time to time, for making selection of candidates for appointment to the posts.*
2. *While referring the vacancies to the Board, the Administrative Department shall specify the number of the post for which selection is to be made from reserved categories, provided that the appointing authority may with prior approval of the Government in the General Administrative Department and for sufficient reasons to be recorded make appointment in individual cases or class of cases outside the purview of these rules"*

Statutory rules are made by the State, and the same accordingly bind them. Rule 12 (1) makes mandatory that the administrative department concerned shall refer all the vacancies in the subordinate services to the Service Selection Board by 15<sup>th</sup> January of every year. In facts and circumstances of this case what emerges is that Rule 12 has not be complied with by the respondents. Claim of the petitioners is that if the Government and its authorities had faithfully complied with the aforementioned Rule, the petitioners would have got



opportunity on their own right to seek consideration for being selected/appointed for the post of Physical Education Teacher.

Right to seek consideration for being selected/appointed on a post is recognized under Article 16 of the Constitution. Breach of Rule 12 of Rules of 1992 is apparent on the face of record. Right to seek consideration for being selected/appointed on a post is guaranteed under Article 16 and constitutes a Fundamental Right. By prescribing a wrong educational qualification in advertisement notice in the year 2006 and 2007 respondents have deprived the petitioners to seek consideration for being selected and appointed. Further non reference of posts to SSB, a statutory requirement, which has been observed in breach prior to the year 2005 and 2006 has resulted in violation of rights guaranteed under Article 16 of Constitution. The petitioners in such eventuality would be said to be within prescribed age limit when the respondents issued notification in the year, 2008. The petitioners, thus, are held entitled in their own right to seek consideration for being selected/appointed on the post of Physical Education

Teacher in pursuance of notification issued in the year, 2008. Subsequent efforts by the respondents to rectify their mistake cannot be said to undo the wrong which was done to the petitioners. The error was committed by the Government and its authorities while prescribing wrong eligibility qualification by issuance of earlier notification, which by mistake was admitted by issuance of notification of 2009, and this strengthens the claim of the petitioners.

In view of the observations made herein above, the Service Selection Board is duty bound to find out as to whether the petitioners in the writ petitions have secured merit more than last cut of point in open merit and respective categories and in the event the petitioners are found to have secured the requisite merit, then Service Selection Board would make recommendation to the Competent Authority in the Government for their appointment.

For the reasons stated above, these petitions are disposed of by directing that respondent-board shall assess merit of the petitioners and shall find out as to how many of them have secured last cut of point which has been secured by open merit

category/reserved category and make recommendations to the concerned authorities in the Government. This exercise be completed preferably within a period of eight weeks from the date a copy of this order is served upon the respondent-Board. The Competent Authority in the Government is directed to take follow up action by offering appointment to such of the petitioners whose case will be recommended by the Board, within six weeks thereafter.

Disposed of alongwith connected CMPs.

**(Muzaffar Hussain Attar)**  
**Judge**

JAMMU  
22.09.2011  
Karam\*