

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 1234/2010

Date of Order: 10.08.2011

Satish Kumar and anr. vs. State and ors.

CORAM:

MR. JUSTICE MUZAFFAR HUSSAIN ATTAR, JUDGE

Appearing counsel:

For petitioner(s): Mr. P. N. Bhat, Advocate
For respondents: Mr. Rahil Raza, Advocate vice
Mr. S. K. Shukla, Advocate

(i)	Whether to be reported in Journal/Digest	Yes
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(Oral)

This writ petition has already been dismissed against petitioner No. 1 vide order dated 11.12.2010, and survives only in respect of petitioner No. 2.

Vide advertisement notice No. 1 of 2010 dated 12.10.2010 different posts were advertised under the "Jammu and Kashmir Kashmiri Migrants (Special Drive) Recruitment Rules, 2009. The posts of General Line Teacher were also advertised. The petitioner being graduate, applied for the post of General Line Teacher, but he was not called for interview, as he was over age. Aggrieved of the same, petitioner filed this petition seeking a direction to the respondents to consider his case for relaxation of upper age limit with further

direction to the respondents to allow him to participate in the selection process.

The court vide order dated 17.05.2010, directed the respondents to allow the petitioner to appear in the interview at his own risk and responsibility. It was further directed that appearance of the petitioner in the interview shall not create any right in his favour. Direction was also issued that result of the petitioner shall not be declared. The court on 08.07.2011, directed respondent No. 3 to produce result of the petitioner in sealed cover by or before 25.07.2011.

The case was listed on 09.08.2011. Learned counsel for the Service Selection Board produced the merit position of the petitioner in a sealed cover, but cut-off merit was not provided and at the request of learned counsel for SSB, the matter was kept on board for today, so as to enable him to seek instruction in the matter. Today, learned counsel for the board submitted that the cut of merit in the RBA category for the post of General Line Teacher is 18.79 points. Perusal of the result, which has been produced, reveals that petitioner has secured 29.89 points, which means he has secured the merit for being recommended for being appointed on the post of Teacher. The said communication

alongwith merit position of the petitioner is taken on record.

Only issue involved in this writ petition is, as to whether petitioner has any right for being selected/ appointed on the post of teacher being over age.

In order to decide this issue it appears that there is no requirement of calling returns from the respondents, which otherwise has not been filed till date.

Heard learned counsel for the parties and considered the matter.

The learned counsel for petitioner referred to Government order No. 1500-GAD of 2000 dated 21.12.2000 and submitted that in the light of this order, case of petitioner for relaxation of upper age limit is required to be considered by the Administrative Department. It is submitted that petitioner is a graduate and the requisite qualification for the said post of Teacher is 10+2. Learned counsel further submitted that candidates with 10+2 qualification have been selected and appointed. He submitted that in this fact situation, the petitioner is exceptionally qualified and eligible for being selected/ appointed as General Line Teacher and his case is covered by the aforesaid Government order and submitted that respondent-Board is required to

recommend the case of the petitioner for relaxation of upper age limit to the General Administrative Department, which authority has to take a decision, so as to enable the petitioner to reap the fruit of selection process. It is further submitted that in the RBA category, 60 more posts are still available and petitioner having sought consideration under RBA category is entitled for being appointed on the said post.

Learned counsel for the respondents submitted that petitioner is ineligible for being considered for being selected and appointed on the post of General Line Teacher being over age and has no right to seek direction against the respondents, as such, this petition deserves to be dismissed for the reason that none of the rights of the petitioner is infringed.

The petitioner belongs to that section of the society, who because of the circumstances beyond his control, migrated from the Kashmir. The Government has initiated a special drive to give employment to the migrants to ensure their return to their home and hearth. The Government, under the Jammu and Kashmir Kashmiri Migrants (Special Drive), created posts for this section of the society, who suffered because of their migration from Kashmir. In this background, when the petitioner is a graduate and has secured requisite merit

for being selected/appointed on the post of Teacher, his case is required to be considered for relaxation of upper age limit in terms of Government order no. 1500-GAD of 2000 dated 21.12.2000 and also in terms of policy decision of the Government. The petitioner cannot be deprived of the benefits flowing from policy decision of the State Government because of his being over age, more particularly when the posts are still available. In these circumstances, the Service Selection Board is required to recommend the case of the petitioner to General Administration Department (GAD) for consideration of his case for relaxation of upper age limit and then GAD is required to consider his case for relaxation of his upper age limit.

This petition is, accordingly, disposed of in the following manner:

The respondent No. 3 is directed to recommend the case of the petitioner for relaxation of upper age limit to the respondent No. 2 within a period of two weeks from the date a copy of this order is served upon him. The respondent No. 2 shall consider the case of petitioner for grant of upper age limit under the policy decision of the Government and observation made in this judgment within a period of three weeks after receipt of the recommendation from respondent No. 3.

In the event, the upper age limit is relaxed in favour of the petitioner, necessary orders for his appointment shall be issued within one week thereafter. Till decision is taken, one post of Teacher in the RBA category shall remain unfilled.

(Muzaffar Hussain Attar)
Judge

JAMMU
10.08.2011
Karam*