

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Case: LPASW no. D-132/2010

Date of decision: 12.07.2011

Jammu and Kashmir SSRB and anr.

v.

Narinder Paul Chaudhary and ors.

Coram:

Hon'ble Mr. Justice Virender Singh, Judge
Mr. Justice Muzaffar Hussain Attar, Judge

Hon'ble

1. Whether approved for Law Journal? **Yes**
 2. Whether approved for publication in Press?
-

Appearing counsel:

For appellant(s): Mr. S. K. Shukla, Advocate

For respondent(s): Mrs. Surinder Kaur, Sr. Advocate with
Ms. Mehrun Nisa
Mrs. N. Goswami, Dy. AG

Muzaffar Hussain Attar, J

The Jammu and Kashmir Service Selection Board (for short "SSB") issued advertisement notice No. 07 of 2005 dated 20-11-2005 wherein and whereunder, besides other posts, 71 posts of Draftsman (Civil) available in PWD

Department, Divisional Cadre, Jammu were notified and applications were invited from eligible candidates to seek consideration for being selected on the said posts. Two posts in Reserved Category of ALC were also advertised. The last date/closing date for filing of application forms in terms of the said advertisement notification was notified as 24.12.2005. It was also provided that on 01.01.2005, the candidates should not be below the age of 18 years and different upper age limits were provided for general category candidates and reserved category candidates. It was also provided in the notification that the candidate should possess the academic / professional / technical qualifications prescribed for the posts and fulfill other conditions of eligibility prescribed for the post as detailed in Annexure-II of the notification which qualification was to be possessed as on 24.12.2005 viz. last date for receipt of application. It was also provided in the said advertisement notice that the application form should be accompanied besides other certificates, by the certificate of belonging to reserved

category. The academic/technical qualification as prescribed for the post of Draftsman (Civil) was two years Draftsman Training Course Certificate/Diploma from any Government recognized institute.

Respondent no. 1-writ petitioner, being eligible on the terms and conditions of the advertisement notice, filed application form for seeking consideration for being selected and appointed on the post of Draftsmen (Civil) in Divisional Cadre, Jammu. Petitioner sought such consideration as reserved category candidate being member of socially and educationally Backward Class resident of area adjoining to Line of Actual Control (for short "ALC").

Respondent no. 1-writ petitioner though sought consideration as reserved category candidate claiming to be member of ALC category, did not however, submit the requisite certificate either along with application form or before the cut off/closing date viz. 24.12.2005.

SSB issued notification dated 29.12.2006 vide which respondent no. 1 was called for interview not as a reserved category candidate but as a general category candidate.

Respondent no. 1-Writ petitioner feeling aggrieved of the said action of the SSB filed SWP no. 60/07 wherein he prayed for issuance of writ, order or direction against respondents commanding them to entertain ALC category certificate of respondent no. 1 and accord consideration to him as ALC category candidate. Other relief was also sought in the writ petition. Learned Single Judge on 10.01.2007, while issuing notice in the writ petition, directed the respondents therein to consider the case of respondent no.1-writ petitioner under ALC category. The order was however kept subject to objections of the other side. Writ record reveals that respondent no. 1 was subjected to selection process and was called for interview as reserved category candidate falling under ALC category. Writ record

also reveals that respondent no. 1 has secured 60.56 points/marks in the interview.

Appellants filed objections to the writ petition wherein a specific stand was taken that the respondent no. 1 having not submitted category certificate before the closing/cut off date viz. 24.12.2005, as such, he could be considered as general category candidate/open category candidate and not as a reserved category candidate. The appellants also took a specific stand before the writ Court that certificate of being member of ALC can be issued in favour of a person only when he satisfies statutory requirements provided by the J&K Reservation Act of 2004 (for short "Act of 2004") and the J&K Reservation Rules 2005 (for Rules of 2005). Appellants accordingly prayed for dismissal of writ petition.

Learned writ Court vide its judgment dated 3rd June, 2010 directed the appellants to consider respondent no. 1- writ petitioner for selection on the post of Draftsman (Civil)

as a reserved category ALC candidate under Rules. Appellants were directed to complete this exercise within six weeks.

Appellants, being aggrieved of the said judgment, challenged the same in this Letters Patent Appeal. Letters Patent Bench directed the Tehsildar, Nowshera vide its order dated 21st February, 2011 to produce the entire record regarding conduct of enquiry before issuance of ALC category certificate in favour of respondent no. 1- writ petitioner.

Tehsildar, Nowshera produced the record.

We have heard the learned counsel for the parties. Considered the matter.

At first blush, it appeared that the appellants cannot be said to be aggrieved person in respect of judgment of writ Court, inasmuch as, undisputedly, respondent no. 1- writ

petitioner was found to be resident of the area adjoining to line of actual control and certificate was accordingly issued in his favour by the competent statutory authority on 31.05.2006. Admittedly, the said certificate was issued after cut off date but before the date respondent no. 1-writ petitioner was called for interview.

The issue of legal importance, however, was raised by Mr. Shukla, learned counsel appearing for the appellants when he contended that the reserved category certificate of ALC can be issued in favour of a claimant only when he would satisfy statutory requirements as delineated by the provisions of Act of 2004 and Rules of 2005. Learned counsel invited the attention of the Court to the provisions of Statute to indicate that a person who would claim for issuance of ALC category certificate has to show that on the date of filing of application he was resident of the area for 15 years and that income of his father / his income did not exceed Rs. 3.00 lacs per annum. Learned counsel submitted

that cut off date fixed for submitting the category certificate assumes significance, inasmuch as, a candidate on the cut off date may not have been living for 15 years in the area but may complete the said period after the cut off date. Learned counsel submitted that can, in such circumstances, such a person be said to be possessed of all the requisite eligibilities/qualifications for being considered for being selected and appointed on a public post as reserved category candidate. Learned counsel in his wisdom stated that in such situation a candidate though has category certificate issued in his favour but after the cut off date fixed for filing of application, cannot be considered as a reserved category candidate. Learned counsel submitted that admittedly, reserved category candidate certificate has been issued in favour of respondent no. 1-writ petitioner after the cut off/closing date and even the application as reflected in the said certificate was filed on 29.12.2005 viz. after the cut off date before competent statutory authority. Learned counsel submitted that respondent no. 1-writ petitioner in

such factual backdrop cannot claim to be considered for being selected and appointed as reserved category candidate. Learned counsel submitted that in earlier judgment the Court has not taken cognizance of the various provisions of Act of 2004 and Rules of 2005, so no benefit can flow from them in favour of respondent no. 1-writ petitioner. Learned counsel submitted that this LPA deserves to be allowed and judgment passed by the writ court requires to be set aside.

Mrs. Surinder Kaur, learned Sr. counsel appearing on behalf of respondent no. 1-writ petitioner, while responding to the submissions made by Mr. Shukla argued that being member of resident of area adjoining to line of actual control is not an eligibility qualification and if certificate which is only an evidence to certify that a person is resident of area adjoining to line of actual control, is produced after the cut off date, he cannot be denied consideration as a Deserved category candidate. Learned counsel submitted that writ

court on proper appreciation of facts and law has handed down the judgment which is legal and does not call for any interference.

The people of this country have given to themselves Constitution, and the mandate contained therein has to govern the affairs of the State. The solemn declarations made in the Constitution of this Country makes it supreme in its scheme of running the affairs of the State. People are sovereign as such every thing which can be seen and even perceived by human sense is the property which belongs to the people of this country. The individuals who represent the will of the people and who are catapulted to different positions and hold higher or small offices, hold the same as trustees of the people of this country.

Besides others, a post available with the Government or with any instrumentality of the Government or any public authority is a public property. Competent authority can provide eligibility qualifications as also mechanism for filling

up of such posts, which qualification and procedure of mechanism must satisfy the Constitutional mandate. The Constitution has its conscience which has to reflect itself in all walks of life.

Every citizen of this country, in terms of the declared eligibility qualifications provided for filling up of a post, can stake claim for being selected and appointed on the post. The State which is creature of the Constitution and is charged with the duty of filling up of public post has to make such selection/appointments in most fair, transparent and just manner.

Our country which has suffered at the hands of external rulers is inhabited by a huge population which is underprivileged and has suffered at the cruel hands of deprivation. The Preamble of the Constitution paints a rainbow of rights and vivid colours of hope. The creation of socialist State is one of the discernible colour of this constitutional rainbow. The socialist State can be created only when deprived and

under-privileged class of this country is provided access to all the posts available. In order to accomplish dream of the Constitution makers of building a socialist State, number of laudable steps have been taken by the Government(s) and one such commendable step is to provide reservation for making selection and appointment on public posts. The concerned Government(s) in order to accomplish salutary purpose under lying in the preamble of the Constitution have formulated reservation polices. Different kinds of reservations are made in favour of Scheduled Castes and Scheduled Tribes and those who belong to the lowest strata of the society. By mere birth a person becomes a member of either SC or ST. Such type of category of people only require certificate to be issued evidencing this fact. Such certificate can be produced by the candidate even after the cut off date fixed for filing of such certificate.

However, same cannot be said to hold good in respect of a person who is resident of area adjoining to line of actual

control. This class is created by the statute. Statute has accordingly while creating such a category laid down norms for getting benefit of the ALC category and has also provided procedure for seeking such a declaration. The Preamble of the Act of 2004 provides for reservation in appointment, and admission in professional institutions, for the members of Scheduled Castes, Scheduled Tribes and other socially and educationally backward classes and for matters connected therewith or incidental thereto. The relevant provisions of Act of 2004 and Rules of 2005 are reproduced as under:

2(c): "areas adjoining the actual line of control" means the area declared as such by the Government from time to time;

2(k): "recruitment year" means the year in which the selection agencies make recommendations for appointment of candidates for a particular service or post to the appointing authorities;

2(o)(ii): the persons residing in the area adjoining Actual Line of Control;

Provided further that the persons specified below and their children shall be excluded from the category of socially and educationally backward classes'--

Clause ix of 2nd proviso: any person whose annual income from all sources, determined in the prescribed manner, exceeds rupees three lacs or

such amount as may be notified by the Government from time to time in accordance with the prescribed norms;

Chapter II **Reservation in Appointment by Direct Recruitment**

3. Reservation in appointment

Except as otherwise provided hereinafter, available vacancies to the extent as may be notified by the Government from time to time shall be reserved for appointment by direct recruitment from amongst the person belonging to:-

(a) Scheduled Castes and the Scheduled Tribes which shall not exceed the ratio and proportion as the population of each such category bears to the total population of the State as per the latest available census; and

(b) socially and educationally backward classes :

Provided that the total percentage of reservation shall in no case exceed 50%:

Provided further that the Government exclude the services and posts, which, on account of their nature and duties are such as call for highest level of intelligence, skill and excellence, from operation of the Act.

13. Authority competent to issue certificates

The Government may, by notification in the Government Gazette, invest any revenue officer, not below the rank of Tehsildar, with powers to issue certificates in favour of members of the reserved categories:

Provided that in respect of remote and inaccessible areas, the Government may invest any

officer of the Revenue Department, not below the rank of Naib-Tehsildar, with such powers.

14. Presentation of application

A person claiming benefit under the Act shall apply in the prescribed manner to the Competent Authority for grant of a certificate.

15. Registration and Verification

The Competent Authority shall, on receipt of the application,

- (i) immediately record it in a register to be maintained by it and issue to the applicant a receipt to that effect; and
- (ii) scrutinize the application and conduct enquiries as may be necessary for verification of the details of the application as also with regard to the eligibility of the applicant for the certificate.

16. Issuance of Certificates

The Competent Authority shall, within fifteen days from the date of the receipt of the application and for reasons to be recorded in writing either accept the application or reject it. On acceptance of the application, the authority shall immediately issue the requisite certificate to the applicant in the prescribed form."

Rules of 2005:

19. Presentation of application

(1) A person claiming benefit under these rules shall apply to the competent authority for grant of certificate in Form I, II, III, IV, V, VI or VII, as the case may be.

(2) The application shall be presented by the applicant personally or by his father or guardian or

any person holding general or special power of attorney in this behalf.

20. Registration and verification

The Competent Authority shall, on receipt of the application:--

(i) immediately record it in a Register to be maintained by it and issue to the applicant a receipt to that effect;

(ii) scrutinize the application and conduct such enquiries as may be necessary for verification of the details of the application as also with regard to the eligibility of the applicant for the certificate claimed by him.

21. (iii) A person claiming benefit for being resident of Backward Area or of Area near the Line of Actual Control must establish that he/she has resided in the area for a period not less than 15 years before the date of application and is actually residing in the said area. However, a person may not be disentitled from claiming this benefit only on the ground that his/her father or person on whom he/she is dependent is living in a place which is not identified as Backward Area or area near Line of Actual Control on account of his employment, business or other professional or vocational reasons."

A conjoint reading of Sections 2(c), 2(o)(ii), clause (ix) of second proviso and Section 13 to 16 of the Act of 2004 and Rule 19, 20 and 21(iii) of Rules of 2005 does conclusively show that when application is filed by a person claiming benefit of being resident of the area near the line of

actual control has to statutorily established that he/she has resided in the area for a period not less than 15 years before the date of filing of application and is actually residing in the said area. It is also to be shown that his annual income from all sources does not exceed Rs. three lacs or such amounts as may be notified by the Government from time to time in accordance with the prescribed norms. The language in which aforementioned provisions of law are couched assume significance and have direct nexus with the purpose which is sought to be achieved by fixing cut off date for filing of requisite certificates along with the application form. A person who claims the benefit of being resident of area near the line of actual control has to satisfy two statutory requirements so as to make him/her eligible to get benefit, as already stated herein above, that he has resided in the area for a period not less than 15 years before the date of filing of application and is actually residing in the said area and the annual income does not exceed Rs. three lacs.

The cut off date for filing of application and requisite documents/certificates was fixed as 24.12.2005 in this case. The candidate who claims the benefit of reserve category ALC, has to thus file an application seeking benefit of being member of area near the line of actual control to the competent authority, before the cut off date fixed for filing of the application form. The provision of the statutory rule mandates that before the date of filing of application seeking benefit of being resident of area near line of actual control the person must have been residing in the area for a period not less than 15 years and must be actually residing in the said area. The filing of application seeking aforementioned benefit under the Reservation Act of 2004 and Rules of 2005 is necessary as a category certificate can be issued by statutory authority in favour of a person only when he satisfies the statutory requirements for issuance of such certificate. The application for issuance of category certificate of ALC when filed before the cut off date fixed for filing of application form seeking consideration for being

selected and appointed on a post, can enable a candidate to seek consideration as reserved category ALC candidate even if certificate is issued subsequent to the cut off date fixed for submitting such certificate/document. As the very fact of issuance of category certificate would show that the claimant in fact satisfied the statutory requirements and could consequently stake claim for being considered for being selected and appointed on a post as a reserved category ALC candidate. In case even though the candidate files application for issuance of category ALC certificate before the cut off date fixed for submitting such document before the selection authority, the certificate may not be issued by the competent statutory authority on the ground that the claimant does not satisfy the statutory requirements and in consequence thereto he will cease to have claim for being considered as a reserved category ALC candidate.

The contrary view if taken will create not only an anomalous situation, but will also create uncertainty in the process of making selection to a post. Even persons who

would not be similarly situated would be clubbed and grouped together and giving them uniform treatment would be violative of Constitutional safeguard as contained in Articles 14 and 16 of the Constitution of India.

Assume a situation that a candidate makes an application for issuance of reserved category ALC certificate after the cut off date fixed by the selection authority for filing of application, and the competent statutory authority issues the reserved category certificate in favour of the claimant and in such case may be the claimant may not have been residing in the area for a period not less than 15 years before the cut off date but may have competed period of 15 years as resident of the area after the cut off date but before filing of the application for issuance of ALC category certificate and if the claim of such a candidate is directed to be considered as reserved category ALC candidate for making selection/appointment on a public post, then same would create a chaotic and confusing situation, inasmuch as,

on the cut off date candidate would not be eligible to seek consideration for being selected/appointed on a public post as a reserved category candidate, such candidate being a class different from candidates who satisfy all the terms and conditions of the advertisement notification will thus violate Constitutional rights, as guaranteed under Articles 14 and 16 of the Constitution of India, of the candidates who are eligible on the terms and conditions of the advertisement notification. Such a candidate cannot be said to be eligible as a reserved category ALC candidate and the selection authority would be within its rights not to consider such a candidate as a reserved category ALC candidate. However, a situation may arise that a candidate may file application for issuance of reserved category ALC certificate after the cut off date, but actually and factually he may have been residing in the area not less than 15 years not only before the date of filing of application but even before the cut off date fixed by the selection authority for filing of requisite certificates. In such a case even if the application is filed

after the cut-off date and certificate is issued, the said candidate is to be considered as a reserved category ALC candidate.

One more important issue arises as to upto which stage of selection process a candidate would be entitled to file the reserved category ALC certificate. The selection process being not an open ended process, cannot be ordered to be kept in limbo. In order to provide certainty and lawful quietus to the selection process, the selection authority will be well advised to entertain the reserved category ALC certificate after the cut off date, but before the date of examination which may be held for making selection and/or upto the date of interview which may be conducted for making selection of a candidate for being appointed on a public post. The selection authority should not entertain any ALC reserved category certificate beyond the stage as aforementioned and cannot be directed to entertain the same beyond the aforementioned stages of the selection

process as any direction contrary thereto will not be in public interest or in the interest of administration.

Record produced in this case does not show as to when respondent no. 1- writ petitioner applied before the competent statutory authority for issuance of reserved category ALC certificate. The authority before whom the application has been filed though has marked the same to some other authority but no date is recorded on the said application. Reports of the subordinate revenue authorities which are available on the record show the dates as 27.12.2005 and onwards. The reserved category ALC certificate however shows that the application for grant of the certificate was submitted in the office of the statutory authority on 29.12.2005. The affidavit in support of the application has been drafted on 16.12.2005 and it has been attested by the public Notary on 22.12.2005. The actual date when the application was filed is, however, shrouded in mystery.

The concerned statutory authority has dealt with the matter in most casual manner. Statute requires for maintaining of a Register in which all the particulars about the receipt of application and issuance of certificate are to be mentioned. The Tehsildar, Nowshera, who was present in the Court, was asked as to whether any Register has been maintained, he unabashingly stated that no such Register has been maintained. When the statutory authority acts and deals with such important things in such a casual manner, then there can certainly be scope for maneuvering and manipulating the record.

In the facts and circumstances of this case, however, it is assumed that the application for issuance of reserved category ALC certificate was filed before the cut off date as the affidavit filed in support of application has been drafted on 16.12.2005 and has been attested by the public Notary on 22.12.2005. The reserved category ALC certificate has been issued by the competent statutory authority at a

belated stage. Statutory authority was duty bound to either accept or reject the claim of the respondent no. 1-writ petitioner within the period of 15 days as provided by the Statute. Statutory authority has failed to discharge statutory function which act of the said authority cannot be allowed to adversely affect the legal and constitutional rights of respondent no. 1-writ petitioner. In the facts and circumstances of this case, respondent no. 1-writ petitioner was eligible to seek consideration for being selected and appointed as reserved category ALC candidate on the cut off date, so could not have been denied consideration as reserved category ALC candidate when the relevant certificate was available before the date of interview fixed by the selection authority.

Respondent no. 1-writ petitioner has been considered as a reserved category ALC candidate in terms of orders passed by the writ Court. The appellant selection authority is thus duty bound to determine the rights and status of the

respondent no. 1-writ petitioner as a reserved category ALC candidate and in case he has secured appropriate grade which would entitle him for being appointed on the post of Draftsman (Civil) as a reserved category ALC candidate, the selection authority is then duty bound to make appropriate recommendations to the competent authority for consideration of appointing the respondent no. 1-writ petitioner on the post of Draftsman (Civil).

For the above stated reasons, this appeal is held to be meritless and is accordingly dismissed. Registry to return the record to Tehsildar, Nowshera.

Before parting with this judgment, it becomes necessary to place on record our anxiety as to how statutory authorities are dealing with the rights of the public in such a casual manner. The Chief Secretary of the State would be well advised to issue appropriate direction/instruction to all the concerned authorities to strictly comply with the

mandate contained in the J&K Reservation Act, 2004 and
J&K Reservation Rules, 2005.

(Muzaffar Hussain Attar)
Judge

(Virender Singh)
Judge

Jammu

Paramjeet

12.07.2011