

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

LPASW No. 291/2002
CMA Nos. 314/2003 and 161/2006
c/w
LPASW No. 330/2002
LPASW No. 341/2002

Date of decision: 17.05.2012

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| 1. J&KSSRB | v. | Neelam Gupta and ors. |
| 2. J&KSSRB | v. | Jagdeep Kour and ors. |
| 3. J&KSSRB | v. | Jaipal Singh and anr. |

Coram:

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

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| 1. Whether approved for Law Journal? | Yes |
| 2. Whether approved for publication in Press? | |
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Appearing counsel:

For the appellant(s) :	Mr. Vinod Bakshi, Dy. AG
For the respondent(s):	Mrs. Surinder Kour, Sr. Advocate with Mr. Rajiv Gorka, Advocate
	Mr. B. B. Kotwal, Advocate
	Mr. Rahul Pant, Advocate
	Mr. Vivek Sharma, Advocate

Muzaffar Hussain Attar

Three writ petitions were disposed of by one common judgment against which three letters patent appeals have been filed. These appeals have been considered and are being disposed of by this common judgment.

Respondents/writ petitioners in whose favour judgement have been passed in the year 2002 have yet to reap the benefits accrued thereunder.

In the year 1996-97, posts of Physical Education Teachers were advertised by the appellant-Board wherein and whereunder candidates possessing prescribed qualifications were informed to file application forms to seek consideration for being selected and appointed on the said post. The selections made by the appellant-Board in different districts were called in question in writ petitions which were disposed of by the common judgment by the learned writ court, which are the subject matter of these appeals.

Learned writ Court disposed of writ petitions by holding that allocation of 20 points to the candidates holding degrees and diplomas in physical education has rendered the selection process illegal. This plea was accepted on the basis of judgment of the court passed in SWP No. 363-A/1998 in case titled Kuldeep Raj v. Service Selection Board and ors. decided on 19.04.2001. Learned writ court also upheld the contention of the writ

petitioners/respondents, that composition of the selection committee having been changed during the course of selection process, vitiated the same. Learned writ court, however, while relying upon the decision of the Hon'ble Supreme Court reported in AIR 1991 SC 295 in case titled H. C. Puttaswamy and ors. v. the Hon'ble Chief Justice of Karnataka, High Court, Bangalore and ors., instead of quashing the selection of the selected candidates directed that the writ petitioners/respondents should be considered for being appointed on the post in question, as eighteen posts were still lying vacant in district Udhampur. Writ petitions 1841/1997 and 1432/1997 were also disposed of by the same judgement, though the writ petitioners therein were not held entitled to get the benefits of the observations made in the judgement with regard to the allocation of additional 20 points to degree holders and diploma holders, but were held to get the reliefs on the basis of the finding that change of composition of selection committee affected their legal rights.

Mr. Vinod Bakshi, learned Dy. Advocate General appearing for the appellant-Board submitted that the

judgment impugned in the appeals is illegal and would require to be set aside for the reason that writ petitioners/respondents had secured lesser merit in the selection process than those of the selected candidates.

Learned counsel submitted that writ petitioners/respondents after having subjected themselves to selection process, in law, were estopped from challenging the same on the grounds raised in the writ petitions.

Learned counsel further submitted that the appellant-Board was within its rights to change the composition of the selection committee and by changing the composition of the selection committee during the selection process, none of the legal rights of the writ petitioners/respondents have been infringed.

Learned counsel for the respondents/writ petitioners submitted that not only criterion fixed was illegal, inasmuch as, in identical circumstances, Division Bench of this court in LPA(SW) No. 364/1999 titled Balwinder Kour v. State of J&K an ors. decided on 18th October'99, amongst others, also observed that a person possessing B.Ed. degree is entitled to have the additional benefits of same in

comparison to the candidates, who lack the said qualification. It was further contended that learned writ court while relying upon the Division Bench judgment in Kuldeep Raj's case accordingly directed that a candidate possessing B.P. Ed. Degree is entitled to get preference over a diploma holder. Learned counsel further submitted that appellant-Board after initiating the selection process and after nominating members of selection committee could not change the composition of the same. Learned counsel submitted that merit of the some of the candidates was adjudged by the committee having one composition and merit of other candidates was adjudged by the selection committee having different composition, inasmuch as, one of the committee member was replaced by another member. Learned counsel further submitted that writ petitioners/respondents have been arbitrarily denied benefits of the judgment, and during the pendency of the proceedings before this court some of them have turned over age.

The appellant-Board allocated 100 points for making selection to the post of Physical Education Teachers. 50

points were provided as base points and merit was to be determined by the marks obtained in C.P.Ed./B.P.Ed./3 years B.P.E./ D.P. Ed. Additional 20 points were allocated for B. P. Ed./3 years B.P.E./D.P. Ed. When once 50 points became the base points for determining the merit obtained in the aforementioned courses, it does not stand to reason as to how 20 additional points were allocated to same degrees/diplomas. It does not further stand to reason as to how candidates possessing B. P. Ed./3 years B. P. E were grouped together with the candidates having diploma for being allocated 20 additional points. Candidates holding degrees, constitute one single class and those holding diploma constitute another class. The candidates possessing diploma, being definitely academically inferior, could not be clubbed with the candidates possessing degrees. The two different and distinct classes having been grouped together has resulted in violation of the constitutional guarantees contained in Articles 14 and 16 of the Constitution of India. The candidates possessing degrees had to be given preference. The action of the

appellant board in this behalf is not only illegal, but is unconstitutional as well.

The selection committee was required to be nominated in accordance with the J&K (Subordinate) Service Recruitment Rules, 1992 (for short “Rules of 1992”). The composition of the selection committee is described in Rule 9 of the Rules of 1992 and same is reproduced as under:

“Nomination of Committees.” - (i) The Chairman may nominate a committee of not less than two members of the Board for conducting examination and for holding interviews and tests for purposes of selection of candidates for being appointed to the State Cadre.

(ii) Every such committee shall be chaired by the Chairman, and where the Chairman is not a member of the committee, by a member to be nominated by the Chairman.

(iii) Chairman may, if he feels necessary co-opt an expert, specialist in the discipline in which recruitment is to be made.

(iv) The Chairman may nominate a committee of not less than three person for conducting and holding examinations, interviews and tests for purposes of making selection of candidates for being appointed to Divisional and District Cadre:

Provided that the said committee shall be presided over by a member of the Board nominated by the Chairman and the other members of the committee shall be nominated by the Chairman out of the panel of names drawn up and approved by the Board from time to time in this behalf. The

selection made by the said committee shall be approved by the Board before the same is forwarded to the appointing authority.

Provided further that in respect of selection for the posts falling in the District cadre, the District Officer of the discipline in which selection is required to be made, may also be co-opted as member in the said committee.

In the objections filed by the appellant-Board before the learned writ court, it has been stated that Sh. O. N. Trisul, Member of the appellant- Board was nominated as Convener of the Committee, Chief Agriculture Officer and District Officer of the concerned districts were nominated as members of the Committee. The Chief Agriculture Officer, Udhampur because of his other occupations could not continue to associate himself with the selection process and was replaced by District Employment Officer, Udhampur. Initially selection committee conducted the interviews of the some of the candidates and after the composition was changed some other candidates were interviewed. By changing the composition of the selection committee, merit of the competing candidates which formed a class in itself was thus adjudged not by one single committee but by the two committees. The standards of adjudging the merit of

the candidates, admittedly, got changed. There having been no uniformity in adjudging the merit of the competing candidates, the selection process was rendered arbitrary, violating the constitutional guarantees contained in Articles 14 and 16 of the constitution of India.

After taking a view that the selection process was illegal, learned writ court, while relying upon the judgment of the Hon'ble Supreme Court in case titled H. C. Puttaswamy and ors. v. the Hon'ble Chief Justice of Karnataka High Court Bangalore and ors. reported in AIR 1991 SC 295, instead of quashing the selection of the selected candidates, directed the respondents to consider the case of the writ petitioners for appointment on the post of Physical Education Teachers. The view taken by the learned writ court about the composition of the selection committee resulted in extending the benefit of judgment to the writ petitioners in the other writ petitions as well.

For the reasons recorded in this judgment, the impugned judgment does not call for any interference and the appeals are, accordingly, dismissed.

Appellant-Board and appointing authority against whom the directions have been issued by the learned writ court, to implement the judgment of the learned writ court preferably within a period of eight weeks' from the copy of this order is served. Those of the writ petitioners who might have crossed upper age limit for securing the appointment in the Government services shall be deemed to be within age as appeals remained pending before this court for about ten years.

(Muzaffar Hussain Attar) (J. P. Singh)
Judge Judge

Jammu:
17.05.2011
Paramjeet