

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

SWP No. 1170/2010 CMA No. 1637/2010

Date of order: 18.10.2012

Pooja Rani v. State of J&K and ors.

Coram:

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 petitioner(s) : Mr. Rajnish Raina, Advocate

For respondent(s): Mr. Ravinder Sharma, AAG

Mr. Sachin Gupta, Advocate

(Oral)

1. Petitioner and the private respondent responded to the advertisement notice no. 7/2009 and sought consideration for being selected and appointed as R-e-T, which vacancy was available on account of upgradation of Middle School, Gurha Mandlala. Two vacancies were advertised. On the terms and conditions of the advertisement notice, the candidates with mathematics and science background alone could respond to the said advertisement notice for being selected and appointed as R-e-T.
2. A merit panel of candidates was prepared, in which the petitioner with science background figured at Serial no.

1 having 78.5% marks at 10+2 level, whereas, the private respondent also with the science background figured at serial No. 3 having 48.3% marks at 10+2 level. The merit panel was subsequently changed, in which, private respondent figured at serial no. 1, whereas petitioner figured at serial no. 2. Private respondent, besides being 10+2 with Science subjects, was also possessed of B. A. degree in Arts. It appears that on the basis of this degree, private respondent was, subsequently, selected and appointed as R-e-T.

3. Learned counsel for the respondents submitted that in terms of Government Order No. 396-Edu of 2000 dated 28.04.2000 read with Government Order no. 1503-Edu of 2003 dated 01.10.2003, academic qualification viz. B. A. degree was to be considered. Learned counsel submitted that the degree at graduation level in the Arts subjects could be considered.
4. The advertisement notice specifically provided that the candidates with 10+2 in mathematics and science would be eligible for seeking appointment in the Primary School which was upgraded to the Middle

School level. It is not in dispute that both the petitioner and the private respondent are having science subjects at 10+2 level. It is also not in dispute that petitioner is possessed of superior merit at 10+2 level than that of private respondent. Private respondent stole march over the petitioner only because he was possessed of B. A. degree qualification, but in Arts subjects.

5. The Sarva Shiksha Abhiyan (**SSA**) Scheme was amended in April, 2008, whereunder, it was provided that from amongst three posts, two posts shall be filled by the candidates having science and math background. It has been provided in the advertisement notice that the candidates with mathematics and science background at 10+2 level would be eligible to seek consideration for being selected and appointed on the post of R-e-T.
6. The purpose of appointing a R-e-T teacher with science background is to ensure that students, who are reading in the school, are taught science subjects. The graduation degree in Arts, in such circumstances, will be inconsequential. Assume a situation that B.A.

degree in Arts is also considered, it would not advance cause for which science teacher is to be appointed. A person with graduation or post graduation degree in arts subjects will not be in a position to teach the science subjects. Any additional qualification which is not in the science stream is thus to be excluded from the consideration. This issue is to be looked at from another stand point as well. If the degree of graduation in Arts was to be considered, it should have been specifically mentioned in the advertisement notice that such degree would be considered. In absence of such a stipulation in the advertisement notice, those candidates, who must be having 10+2 with science and degrees in Arts both at graduation and post graduation level, would have also sought consideration for being selected and appointed as R-e-T. The intention of the employer is clear that the candidates with math and science at 10+2 level would be eligible and thus, *inter se*, merit between the competing candidates in science stream is to be considered for making selection and appointment on the said post. B. A. in Arts is to be

excluded. Petitioner, admittedly, is possessed of superior merit than that of the private respondent at 10+2 level. Petitioner was, thus, to be selected and appointed on the post of R-e-T in science stream.

7. Official respondents have proceeded in the selection process on a premise, which cannot be countenanced in law.

8. For the above stated reasons, this petition along with connected CMA(s) is disposed of in the following manner:

“By issuance of writ of Certiorari, selection and appointment of respondent no. 6 as R-e-T is quashed. Respondents 1 to 5 are directed to engage the petitioner.”

(Muzaffar Hussain Attar)
Judge

JAMMU
18.10.2012
Paramjeet