

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

SWP No. 570/2007
CMA No. 797/2007

Date of decision: 30.05.2012

Nidhi Sharma. v. State of J&K & ors.

CORAM:

Mr. JUSTICE J.P. SINGH.

Appearing Counsel:

For Petitioner(s) : M/S D. S. Chauhan, Vikas Mangotra, Advocates.

For Respondent(s) : Mr. H. C. Jalmeria, Advocate.

JUDGMENT

Petitioner-Nidhi Sharma and respondent No.6-Mohan Singh claim selection and engagement as Rehbar-e-taleem-3rd Teacher in Government Primary School Tolla- Plahi –Basholi. According to the petitioner, respondent no.6 was ineligible to compete for selection against the post of 3rd Teacher (Rehbar-e-taleem), for, he did not possess the essential qualification of Graduation needed therefor, and his qualification of BPED and MPED was not equivalent to Graduation. Another reason advanced by her to oppose respondent No.6's claim and support her candidature for selection and engagement, is the dismissal of respondent No.6's Writ Petition (SWP) No. 2230/2003 where he had questioned the selection of

the petitioner as Rehbar-e-taleem. The petitioner claims selection and engagement as 3rd Teacher on the basis of her superior merit.

Considered the submissions made by the learned counsel for the parties at the Bar.

Although during the course of consideration of the Writ Petition, it was argued by respondent No.6's learned counsel that Graduation cannot be taken as essential qualification for the 3rd Teacher for the vacancies notified in June 2003 because the qualification of Graduation came to be prescribed only under Government Order No. 1503-Edu of 2003 dated 01.10.2003 which having no retrospective operation, would have no application to the vacancies notified for selection four months prior thereto; but after going through the Records and examining the factual position that emerged therefrom, and which position was not contested by respondent No.6's learned counsel, it was found that even if the necessary qualification for the vacancies notified prior to the issuance of government Order No. 1503-Edu of 2003 dated 01.10.2003 were to be taken as 10+2 even then respondent No.6 would have no superior claim for selection and engagement as Rehbar-e-taleem in view of her admitted lower merit in 10+2 as against petitioner's higher merit in 10+2 where she secured 355 out of 600

marks in the Jammu and Kashmir State Board of School Education Session March-April 1998.

Looking to the better merit of the petitioner in 10+2 as compared to that of respondent No.6, and having professional edge over the respondent because of her qualification of BEd, she could not be denied selection and engagement as Rehbar-e-taleem against the vacancy of 3rd Teacher.

Respondent No.6's qualification of BPED and MPED are job specific requirements meant for Physical Education slots and would not as such give him any edge over the higher and superior qualification of B.Sc and B.Ed of the petitioner.

For what has been said above, the Petitioner, therefore, succeeds in establishing her superior claim for selection and engagement as Rehbar-e-taleem in Government Primary School Tolla- Plahi –Basholi on the basis of higher merit in 10+2 besides additional qualification of B.Ed and the essential qualification of B.Sc. She is, accordingly held entitled thereto against the post reserved vide this Court's order dated March 30, 2007.

This Petition, therefore, *succeeds* and is accordingly *allowed* issuing directions to the State respondents to finalise the petitioner's selection and engagement as

Rehbar-e-taleem in Government Primary School Tolla-
Plahi –Basholi within a period of *one month*.

(J. P. Singh)
Judge

Jammu:
30.05.2012
Sunita.