

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

SWP No. 1421/2011

CMA No.2365/2012

CMA No. 3109/2011

CMA No. 2065/2011

Date of decision:30.08.2013

Sushil Singh v State and others.

Coram:

Hon'ble Mr. Justice Janak Raj Kotwal-Judge

Appearing counsel:

For petitioner (s):	Mr. Abhinav Sharma, Advocate & Mr. B. R. Manhas, Advocate
For respondent(s):	Mrs. Z. S. Watali, Dy. AG for Nos. 1 to 4. Mr. Rakesh Sharma, Advocate for No. 5

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| i. | Whether approved for reporting in Press/Media | : | Yes/No/Optional |
| ii. | Whether to be reported in Digest/Journal | : | Yes/No |
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1. Heard. I have perused the record.

2. Applications for engagement of 'Rehbar-e-Taleem' (ReT) teachers were invited by the Chief Education Officer, Jammu (respondent No. 3) vide Advertisement Notification No. 2 of 2009, which was published vide DIP/J-206 dated 11.04.2009. The advertisement *inter alia* comprised of two posts for Middle School, Garh (MS Garh) in Akhnoor Zone. Eligibility conditions for engagement as ReT among others were that the candidate should be a permanent resident of the State and be actually

residing in the village where the appointment was to be made. The recruitment procedure provided that 'the applicant shall be selected on the basis of strict merit at village level/Panchayat/zone level/ward as per directions issued vide Government order No. 10639-Edu. of 2003 dated 12.11.2003.' It was, however, further provided that panchayat level/zonal level panel shall be drawn only if no eligible candidate of village/ward level applies. It was also provide in the advertisement notification that 'any qualification acquired after the cutoff for receipt of application form as per the advertisement shall not be considered'.

3. Petitioner applied for a post in MS Garh. The Village Education Committee (VEC) in a meeting held on 11.05.2009 under the chairmanship of Zonal Education Officer, Akhnoor (respondent No. 4) after verification of the application forms of the candidates by a resolution **(Annexure-B)** recommended seven candidates for the two posts in MS Garh. On 14.05.2009, respondent No. 4 prepared a tentative panel of candidates for consideration for engagement against the said two posts **(Annexure- C)**. This panel comprises of all the seven candidates figuring in the resolution passed by the VEC. This panel seems and indisputably was prepared on the basis of merit obtained by the

candidates in their academic qualification. Jublee Singh (respondent No. 5) whose qualification has been shown as B.Sc. figures at serial No. 1 in this panel whereas qualification of all other candidates has been shown as 10+2 and they have been placed in the list in descending order as per the percentage of marks obtained by them. To say briefly, Kashmir Singh, whose percentage of marks in 10 + 2 was 62 figures at serial No. 2 and Sushil Singh (petitioner) with percentage of marks as 60.01 figures at serial No. 3. On the same day, respondent No. 4 prepared tentative panel of two candidates comprising of respondent No. 5 at serial No. 1 and Kashmir Singh at serial No. 2 (**Annexure-D**) for their engagement against the said two posts. Both the panels, that is, Annexure-C and Annexure-D were signed by the members of VEC.

4. Petitioner says that he raised objection at various levels to placement of respondent No. 5 in the panel on two grounds. He alleged, firstly and mainly, that the B.Sc. degree produced by respondent No. 5, purportedly issued by the Bundelkhand University, Jhansi, was a forged document and secondly, that the said certificate was produced by him after the cutoff date for submission of the application forms. In the meantime, a relative of the petitioner secured report (**Annexure-F**) from Assistant Registrar,

Bundelkhand University, Jhansi that confirmed the forgery of B. Sc. degree produced by respondent No. 5. Petitioner says further that respondent No. 4 also took up the matter with Registrar, Bundelkhand University, Jhansi vide his No. ZEO/AKH/315 dated 10.06.2009 and the Registrar of the University vide communication No. B.U./Conf./105, dated 15.06.2009 (**Annexure-H**) informed respondent No. 4 that Sh. Jublee Singh son of Jagtar Singh (respondent No. 5) has not appeared in B.Sc. Final year 2004 under roll No. 80945 from any of the centers affiliated with the said University and that his marks sheet was forged and has not been issued by the that university. The Registrar also requested respondent No. 4 for getting FIR registered against the person who has produced the forged documents.

5. Respondent No. 2 issued composite list dated 24.10.2009 (**Annexure-J**) of the candidates for engagement as ReT teachers. Respondent No. 5 was shown in this list for his engagement in MS Garh, besides Kashmir Singh. Petitioner has contended that this list was issued in spite of the fact that by that time information dated 15.06.2009 (**Annexure-H**) was received by respondent No. 4. He has alleged that the respondent No. 4 had received this information on 20.06.2009 but, for the reasons

best known to him, he retained it with him and dispatched it to respondent No. 3 only on 28.08.2008 and by the time it reached the office of respondent No. 2 the list dated 24.10.2009 (**Annexure-J**) was issued.

6. Petitioner has contended further that he again represented before the official respondents that the B. Sc. degree of respondent No. 5 having been found forged, he being next in the merit list should be engaged against one of the two posts in MS Garh. Having failed to get any relief from the official respondents, he approached this court by the medium of a Writ petition, SWP No. 447/2010, arraying official respondents and the respondent No. 5 as respondents in the said writ petition. Respondents filed their objections.
7. SWP No. 447/2010 was disposed of by a Id. Single Judge of this Court vide judgment and order dated 22.12.2010. The judgment rendered by the learned Single Judge would show that in that writ petition, respondent No. 5, while refuting petitioner's allegation, had relied on Deputy Registrar, Bundelkhand University, Jhansi's communication dated 29.03.2010 to the Zonal Officer, Block Akhnoor, wherein he was indicated to have

appeared in the Bachelor of Science examination from Bipin Bihari Degree College, Jhansi (Uttar Pradesh) and declared passed in the First Division by the University. Learned Single Judge, taking notice of contradictory communications from Bundelkhand University, Jhansi in respect of the B.Sc. degree of respondent No. 5, felt the necessity of inquiry in the matter, and disposed of the writ. Operative part of the judgment and order dated 22. 12. 2010 reads;

“This petition is, therefore, disposed of with a direction to the Director School Education, Jammu to hold enquiry to record finding of fact as to whether or not Jublee Singh was holding a genuine graduation Degree in Science at the time of seeking selection as Rehbar-e-Taleem. For the purpose of enquiry, the Director may record such evidence as may be considered necessary to arrive at the finding. He may in this behalf, obtain requisite information from the Authorized Officer/Registrar of Bundelkhand University, Jhansi, too certifying under his seal and signatures as to the authenticity or otherwise of the Degree on the basis whereof Jublee Singh was selected as Rehbar-e-Taleem.

After holding such enquiry, he shall pass appropriate orders for confirmation or otherwise of Jublee Singh's selection for engagement as Rehbar-e-Taleem. Parties shall be at liberty to place such material before the Director on which they place reliance to project their view point on the issue in question”.

8. Petitioner has now again approached this court in this Writ Petition reiterating contentions as stated briefly hereinabove, besides contending that Director School Education, Jammu (respondent No. 2) did not conduct

any enquiry as directed in earlier Writ Petition, SWP No. 447/2010. The relief sought by the petitioner is:

Certiorari directing respondents to quash tentative panel (**Annexure-D**) issued on 14.05.2009 wherein respondent No.5 figures at serial No. 1, besides Kashmir Singh, who figured at serial No. 2.

Certiorari: quashing and setting aside to the extent of respondent No. 5 the list of dated 24.10.2009 issued by respondent No. 2 (**Annexure-J**) in which respondent No. 5 has been shown at serial No. 2 for his engagement against one of the two posts in MS Garh.

Mandamus commending the official respondents to operate afresh tentative panel of candidates dated 14.05.2009 (**Annexure-C**) deleting the name of respondent No. 5 figuring at serial No. 1.

Mandamus commending the official respondents to prepare the panel afresh showing the name of the petitioner, having secured 60.01 per cent marks, at serial No. 2 after the name of Kashmir Singh at serial No. 1.

Mandamus: directing the respondents to consider the engagement of petitioner as ReT teacher against one of the posts in MS Garh.

Mandamus: directing the official respondents to disengage respondent No. 5 as ReT teacher engaged in the MS Garh.

9. Official respondents, while not refuting the allegation as regards forgery of B. Sc. degree/certificate of respondent No. 5, have admitted in their reply that respondent No. 5 was placed at serial No. 1 in the panel on the basis of his merit position. Obviously, he figured at serial No. 1 on the basis of his qualification as B. Sc. which is evident in the relevant portion of the reply, which reads:

“Respondent No. 5 as per merit position was placed at serial No. 1 in the panel list which is duly prepared by the Committee constituted as per norms and subsequently forwarded to the higher authorities for approval. Meanwhile the petitioner objected the selection of respondent No. 5 on the ground that the B.Sc. Certificate produced by the respondent No. 5 and taking into consideration by the Selecting Body cannot be relied upon the ground that the said certificate is fake”.

10. The official respondents have also informed the Court through their reply that:

“After conducting the thorough enquiry by the higher authority, the selection by the respondent No. 5 as R.E.T. was rejected by the Director School Education (Jammu) vide Order No. DSEJ/Legal/9354-56 dated 19.11.2011 and the C.E.O. Jammu was directed to furnish the displayed panel of next meritorious candidate for the engagement of RET in Math Stream in Middle School, Ghah, Zone Akhnoor.”

11. Respondent No. 5 in his reply, while admitting that he figured in the panel at serial No. 1 and petitioner at S. No. 3 and that he also figured in the composite list of candidates issued by respondent No. 2, has maintained that his B. Sc. degree is a genuine document. He has also contended that the respondent No. 2 has not conducted inquiry into the matter in compliance with the order passed by this Court in the earlier writ petition of the petitioner.
12. Learned counsel for the parties in their submission have reiterated the contention raised in their pleadings.
13. Order No. DSEJ/Legal/9354-56 dated 19.11.2011, referred to in their reply by the official respondents, is available on the record. This order has been passed by the Director School Education, Jammu (respondent No. 2) after the inquiry conducted in compliance to the order dated 22.12.2010 passed by this Court in SWP No. 447/2010 (supra). Relevant portion of the order passed by respondent No. 2, as it is important, reads:

“Whereas, in compliance to the Hon’ble High Court directions, the matter was taken up with the Registrar Bundelkhand University, Jhansi to confirm and intimate that which one of the letter is genuine out of the two aforesaid contradictory letters.

Whereas University authorities communicated that Sh. Jubilee Singh has not appeared in BSc examination from any of the Centre affiliated with the University and the same is forged vide letter No. 2011/0800-01 dated 04.07.2011.

Further the earlier letter issued by this University vide No. 105 dated 15.06.2009 is genuine and the second letter being No. 1336-2003 dated 29.03.2010 has not been issued by the University.

Whereas the case of Sh. Jubilee Singh for engagement of RET in MS Garh in Math Stream has been examined on the basis of report of Bundelkhand University vide No. 2011/0800-01 dated 04.07.2011 which is found devoid of any merit and is hereby rejected.

Now therefore, in view of the above, Chief Education Officer, Jammu is hereby directed to furnish the displayed panel of next meritorious candidate for the engagement of RET in Math Stream in MS Garh, Zone Akhnoor.”

14. It is, thus, clear that in the result of the inquiry conducted, in compliance to the order dated 22.12.2010 passed by this Court in SWP No. 447/2010 (supra), by the respondent No. 2, who is also the Chairman of Selection Committee, case of respondent No. 5 has been found devoid of any merit and his engagement as ReT teacher for MS Garh has been rejected.
15. Now as the engagement of respondent No. 5 as ReT teacher for MS Garh stands rejected, relief in the nature of Certiorari as sought by the petitioner is not required to be granted and Writ Petition to that extent can be said to have become infructuous. To say

otherwise, quashing of selection and engagement of respondent No. 5 after the engagement stands rejected by the competent authority is not required and the unrequired need not be done by the court.

16. Even availability of Mandamus would not have been considered in view of respondent No. 2's direction to the Chief Education Officer, Jammu to furnish displayed panel of next meritorious candidates but consideration in this regard has a bearing for the reasons to follow:

16.1. In its reply official respondents have not shown their readiness, much less, eagerness to engage petitioner who, but for the production of fake B.Sc. degree by respondent No.5, would have figured at serial No.2 in the panel and in spite of detection of forgery at an earliest has been made to knock at the doors of the concerned officers and approach this court twice.

16.2. During pendency of this writ petition, one Lotus Rani, who is said to be the real sister of respondent No. 5 and figures at serial No. 5 in the panel (**Annexure-C**), has moved a miscellaneous petition raising objection to engagement of the petitioner and the candidate figuring at serial No. 4-Virender Singh Baloria. Her objection against the petitioner is that he is not

actually and physically residing in village Garh for 20 years and is residing in Mandlik Nagar, Phase-I, Toph Sherkhanian, Jammu. In support, she has produced copy of electricity bill issued in the name of one Balbir Singh son of Sh. Tripta Singh and report of patwari counter signed by the Naib Tehsildar, Akhnoor, showing that as per Chowkidara register, Balbir Singh son of Tripta Singh is not residing in village Garh, Tehsil Akhnoor from last eight years.

16.3. Though there had been no representation on behalf of said Lotus Rani when the case was last taken up and heard on 23.08.2013 as also on the date of hearing earlier thereto and her petition is liable to be dismissed in default but a comment on the objection raised by her is necessitated in context of the petitioner's claim. It needs to be emphasized in this regard that the tentative panel dated 14.05.2009 (**Annexure-C**) in which petitioner figures at serial No. 3, respondent No. 5 at serial No. 1 and Lotus Rani at serial No. 5 is signed by all the members of the VEC and contains a certificate that all the candidates figuring in this panel "are residents of village Garh and are presently residing in the Village." One of the members of VEC is Jagtar Singh, who is said to be the father of respondent No. 5 (Jublee Singh), Lotus Rani and Kashmir Singh who figures at serial No. 2. It is thus clear that the tentative panel of seven candidates has been prepared after satisfaction of the VEC that all the

candidates figured therein are residents of village Garh. This panel, but for challenge to inclusion of respondent No. 5, has not been challenged and has been given effect as regards Kashmir Singh so has attained finality.

17. For the aforementioned, the writ petition is allowed directing the official respondents, in particular, respondent No. 2 to take into consideration the tentative panel (**Annexure-C**) ignoring the name of respondent No. 5, Jublee Singh figuring at serial No. 1 and taking the name of the petitioner, Sushil Singh, as at serial No. 2, for filling up of the post of ReT teacher in MS Garh pursuant to the Advertisement Notice No. 2 of 2009.
18. CMP No. 3109/2011 is dismissed in default.

(Janak Raj Kotwal)
Judge

Jammu:
30.08.2013
Rakesh