

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 431/2013
CMA No. 575/2013.

Dated: 24.05.2013

Ajay Kumar Tandia v. State and others.

Coram:

Hon'ble Mr. Justice Tashi Rabstan-Judge.

Appearing counsel:

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

For respondent(s) : Mr. F.A.Natnoo, Advocate

Whether approved for reporting : Yes.

Petitioner by the medium of petition-in-hand seeks the following relief:-

- (i) Mandamus commanding the respondents to permit the petitioner to appear in the J&K Combined Competitive (Main) Examination, 2012 by treating him to be fully eligible and to have qualified his Degree of Bachelor of Dental Surgery on 26.12.2011;
- (ii) Certiorari quashing the Notification No.PSC/Exam/2012/171 dated 12.12.2012 whereby the Application Form of the petitioner has been rejected treating him to ineligible;
- (iii) Certiorari quashing the decision of the Appellate Authority of respondent No.2-Commission whereby the appeal filed by the petitioner against rejection of his Application Form has been rejected;
- (iv) Any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be also granted in favour of the petitioner."

The case of the petitioner in brief is that he in response to Advertisement Notification issued by respondent No.3 vide No.PSC/EXM-12/58 dated 09.04.2012 invited applications from eligible candidates for appearing in the J&K Combined Competitive (Preliminary) Examination 2012, submitted his application form well before the last date fixed for submission of application forms for such preliminary examination i.e. 15.05.2012. Among other conditions of eligibility prescribed in the aforesaid Advertisement Notification, the following condition, which is relevant for the controversy raised in this petition, was incorporated in clause-4(iii), which is reproduced hereunder:

“A candidate must hold a Bachelor’s degree of a recognized University in India or of a foreign University declared by the Government in consultation with the Commission to be equivalent to the degree of a recognized Indian University.

Provided that the candidates who have appeared fully in the above examination on or before the last date for receipt of application forms for Preliminary Examination for such degree from any such University the passing of which would render them eligible to appear in the examination but the result of their examination has not been declared, shall be allowed to appear in the preliminary examination. All such candidates who are declared qualified by the Commission for taking the Combined Competitive (Main) Examination shall have to produce proof of passing such examination with their applications for the Main Examination failing which such candidates shall not be admitted to the Main Examination.....”

It is contended that petitioner had appeared in the final examination of Bachelor of Dental Surgery (BDS) in October 2011 and also fulfilled other eligibility conditions prescribed in the aforesaid notification and he was, therefore, eligible in terms of Advertisement Notification and, as such, being fully eligible applied for appearing in

the J&K Combined Competitive (Preliminary) Examination 2012, which was to be held on 5th August, 2012. It is further contended that petitioner appeared in the J&K Combined Competitive (Preliminary) Examination 2012 under Roll no.1701795 and based upon his performance in the said examination was declared qualified for admission to the J&K Combined Competitive (Mains) Examination 2012 vide result Notification no.PSC-EX-12/116 dated 28th August, 2012. Petitioner has placed on record the result Notification dated 28th August, 2012 as Annexure-C to the writ petition.

Respondent No.3 after declaring the result of Preliminary Examination issued fresh Notification No.PSC/EXM2012/118 dated 31st August, 2012 inviting applications from amongst the candidates, who had qualified the Preliminary Examination for appearing in the Combined Competitive (Mains) Examination 2012. Amongst other conditions, an eligibility condition was incorporated in the Advertisement Notification dated 31st August, 2012 in its clause 5(c), which for facility of reference is reproduced hereunder:

“A candidate must hold a Bachelor’s degree in any subject from a recognized University in India or from a foreign University declared by the Government in consultation with the Commission to be equivalent to a degree of a recognized University.

The candidate shall have to provide the proof to the effect that he/she had appeared in the requisite examination upto the last date for receipt of Application for Preliminary Examination viz. upto 25.05.2012 and had qualified the Examination at the time of filling up the Application Forms for the Mains Examination, failing which, such candidate shall not be admitted to the Mains Examination.”

Since the petitioner had qualified the Preliminary Examination, as such, submitted fresh application form in

response to Notification dated 31st August, 2012 for appearing in the Mains Examination. Respondent No.3, however, disputed his eligibility to participate in the Mains Examination on the plea that in terms of SRO 387 of 2008 dated 1st December, 2008 read with SRO 98 of 2012 dated 22nd March, 2012 and J&K Public Service Commission (Conduct of Examination) Rules 2005, the petitioner had failed to produce the proof of having passed final degree examination on or before 4th October, 2012 i.e. the last date fixed for submission of application forms in the Notification dated 31st August, 2012 issued by respondent No.2 for conducting the Mains Examination. The petitioner in this petition has not disputed this fact that on the cut of date i.e. 4th October, 2012, petitioner was not possessed of any proof of having passed the final degree examination but the plea of the petitioner is that he had appeared in the final year examination of BDS, which was held in the month of October 2011. The result of the final year examination of BDS held in October 2011 was declared by Jammu University on 26th December, 2011. The petitioner has also placed on record the result Notification dated 26th December, 2011, in which, the result of petitioner has been indicated as 'disputed eligibility/court case'.

The petitioner further contends that the result of the petitioner and some other candidates, who had studied in the Institute of Dental Sciences, Sehora, Kunjwani was not declared on account of pendency of litigation in this Court over the refusal of University of Jammu to register 88 candidates of the aforesaid institute, which included the petitioner also, on the ground that the admissions had been granted to the said candidates without following proper procedure i.e. without conducting any entrance examination. The said controversy however, was put at

rest by this Court vide its judgment dated 16th November, 2012, which the petitioner had also placed on record of the writ petition as Annexure-H. Petitioner further contends that in the light of judgment passed by this Court in OWP No.746 of 2007 dated 16th November, 2012, the controversy with regard to admissions of the candidates including the petitioner, was finally settled and the direction as issued by the Court to grant registration to the students, which included the petitioner also, so that those who have successfully completed their course, are in a position to obtain their degrees.

Pursuant to the judgment passed by the court, it appears that the University of Jammu vide its result notification dated 12th December, 2012 declared the result of the petitioner. This result notification dated 12th December, 2012 is part of writ record as Annexure-J and perusal whereof indicates that the same has been issued in continuation of the result notification No.1 dated 26th December, 2011. The name of the petitioner appears at serial no.6 of the aforesaid notification. On this basis, the petitioner contends that the original result of the examination held in October 2011, in which, the petitioner had participated was declared by the University of Jammu on 26th December, 2011, however, the result with regard to the petitioner could not be declared due to disputed eligibility and pending litigation before the court, which was lateron declared on 12th December, 2012, which notification was in continuation of the earlier result notification dated 26th December, 2011. That being so, the petitioner contends that the result of the petitioner would be deemed to have been declared on 26th December, 2011. To elaborate, the petitioner further contends that in any case the petitioner had qualified the examination on 26th December, 2011 when the result of

final year examination of BDS held in October 2011 was declared, but, it was only because of the reasons stated above, the result of the petitioner was withheld. The release of result of the petitioner vide Notification dated 12th December, 2012 is, therefore, date back to the date of declaration of the original result dated 26th December, 2011. On this reasoning, the petitioner claims to have qualified the BDS final examination on 26th December, 2011, though his result was also withheld and was released/declared in terms of the judgment passed by this court on 12th December, 2012.

On the other hand, the respondents have laid stress on the stipulation in the notification issued by respondent No.2 and insist that a candidate to be eligible was liable to produce the proof of having passed the degree examination on or before 4th October, 2012 i.e. the last date for submission of application forms. Since the petitioner's result was declared only on 12th December, 2012, as such, same was not rightly entertained by the respondent no.2 and consequently petitioner was rightly declared ineligible to participate in the further process of selection. It is further contended that the petitioner had even filed an appeal before the appellate authority of the Commission as per Rule 31 of the J&K Public Service Commission (Business and Procedure) Rules, 1981, but the appellate authority too rejected the appeal and ultimately declared the petitioner ineligible to participate in the further process of selection. Respondent no.2, therefore, sought the disposal of the writ petition on the aforesaid plea. It is further contended by the respondent No.2 that as per the settled position of law candidate is required to possess the basic eligibility on the cutoff date fixed for submission of application forms and acquisition

of eligibility qualification subsequent to the cutoff date cannot be entertained.

Heard the learned counsel and perused the record. It is not in dispute that petitioner had appeared in the final year examination of BDS held in October 2011, result whereof was declared by the University on 26th December, 2011. It is also not in dispute that the result of the petitioner could not be declared due to the University having disputed his eligibility and the pendency of OWP No.746 of 2007. The controversy with regard to the eligibility of the petitioner and others was later on set at rest by the High Court vide its judgment dated 16th November, 2012 passed in the aforesaid writ petition whereby a direction was issued to the University to grant registration to the students including the petitioner so that they are in a position to obtain their degrees if they have successfully completed the course. It is in pursuance of this direction of the Court, the result of the petitioner was declared vide result notification dated 12th December, 2012. It is further evident from the notification dated 12th December, 2012 issued by the University of Jammu that the said result notification was only in continuation of result notification No.01 dated 26th December, 2011. It is, thus, clear that the petitioner had qualified the BDS final examination on 26th December, 2011, but, declaration of his having passed the examination was deferred due to the reasons beyond his control. The dispute raised by the University with regard to the eligibility of the petitioner and others was ultimately set at rest by this Court while deciding OWP No. 746 of 2007. That being so, the petitioner is right in his submission that the declaration of his result should date back to 26th December, 2011 and that being so he had qualified the final year examination of BDS, a graduate level course much before 4th October,

2012 i.e. the last date fixed for submission of application forms.

Learned counsel for respondent No.2 has placed reliance on a judgment passed by the Apex Court in **Ashok Kumar Sharma and others v. Chander Shekhar and another** reported in **(1997) 4 SCC 18** to contend that all eligibility qualifications are required to be fulfilled by a candidate on or before the cutoff date meant for submission of the application forms. This position of law cannot be disputed, but, in view of what has been observed herein above, it is a case of the petitioner having qualified the aforesaid examination on 26th December, 2011 and that being so, it may not be contended that petitioner qualified the degree after 4th October, 2012. By not disputing the position of law propounded by learned counsel for respondent No.2 vis-a-vis the acquisition of eligibility qualification on the cut off date, this Court is constrained to hold that the petitioner in the facts and circumstances of the case would be deemed to have qualified the degree level examination much before 4th October, 2012. The court has come to this conclusion on the basis of the facts and circumstances of this case as also a clear stipulation in the result Notification dated 12th December, 2012 to the extent that the subsequent result notification was only in continuation of the earlier result notification dated 26th December, 2011. Had the University raised the issue of eligibility and the result of the petitioner would have been declared in the ordinary course of things, he would have been declared pass on 26th December, 2011. The result of the petitioner was, however, withheld for the reasons given in detail by the writ petitioner in the writ petition.

This court is in agreement with the submissions made by the learned counsel for the petitioner at the Bar

that in view of the facts and circumstances, the petitioner cannot make to suffer particularly when he was not in any manner contributory to the delayed declaration of his result. It is also pertinent to note that when the petitioner was declared ineligible by respondent No.2 to participate in the Mains Examination, he approached this court through the medium of this petition and this court vide its order dated 27th February, 2013 allowed the petitioner to participate in the Mains Examination. Petitioner claims to have participated in the Mains Examination, the result whereof has not been declared so far.

In the light of what has been stated hereinabove, writ petition is allowed. Petitioner is, therefore, deemed to have qualified the Degree of Bachelor Dental Surgery on 26th December, 2011 and is, therefore, eligible to participate in the selection process initiated by the respondents in terms of Notification No.PSC/EXM-12/118 dated 31st August, 2012. Respondent No.2 is, therefore, directed to declare the result of the petitioner for final examination and in case the petitioner has qualified, he would be allowed to participate in the further process of selection. Consequently, Notification No.PSC/EXM/2012/171 dated 12th December, 2012 and the decision of the appellate authority of respondent No.2 rejecting the appeal preferred by the petitioner are quashed. No order as to costs.

Disposed of as above along with connected CMA(s).

(Tashi Rabstan)
Judge

Jammu
24.05.2013
'Madan'

