

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

SWP No. 1149/2009
CMA No. 1531/2009

Date of decision: 21.02.2014.

Raghu Singh Jandla

v.

State of J&K and others.

Coram:

HON'BLE MR. JUSTICE MOHAMMAD YAQOOB MIR, JUDGE

Appearing Counsel(s):

For the petitioner(s) : Mr. Sunil Sethi, Sr. Advocate with Ms.
Veenu Gupta and Mr. Anklesh
Chandel, Advocate.

For the respondent(s): Mr. K.M.Bhati, Adv. for R-5.
None for other respondents.

Whether approved for reporting : Yes

1. Respondent- J&K Service Selection Recruitment Board (For short, SSRB) vide Advertisement Notice No.04 of 2007 dated 19.11.2007 invited applications as against 343 posts of Junior Engineer (Elect.) Grade-II, which include 69 posts under the category of Resident of Backward Area (For short, RBA).

2. Admittedly, petitioner has applied under category RBA, but had not annexed RBA certificate with his application form, as a result whereof his merit position has been considered under open merit category wherein he had failed to make the grade as he had secured

59.54 points whereas the last selected candidate under open merit category had obtained 68.00 points and in open merit wait list 67.36 points. The candidate last selected under category RBA had obtained 58.34 points. The petitioner has submitted category certificate issued in his favour on 10.06.2009, same received by the Receipt Section of SSRB on 18.06.2009. Provisional select list was prepared and published on 23.06.2009. Aforestated position is clearly stated by respondent No.5- SSRB in its detailed reply wherefrom it is clear that in case petitioner would have been considered in RBA category, he would have figured in the select list as having obtained 59.54 points as against the last cut of point 58.34 points in the said category.

3. The question which would emerge for consideration is as to whether non-submission of RBA category along with application form or production of RBA category certificate later in point of time would disentitle the petitioner from being considered under category RBA. It is settled principle that if a candidate acquires qualification subsequent to the cut of date of receipt of application, same has not to be considered. Here it is not a question of acquiring qualification, it is a question of acquiring status of residence. When a particular village is declared as backward area, the persons living there are automatically conferred with the status of being residents of backward area. On satisfaction of norms, prescribed authority issues the requisite certificate. If such certificate is produced later in point of time for the reasons beyond control, same will not deprive the person from claiming benefits of the category. This position is also controlled by one exception, i.e., in case village is declared as backward

area after the cut of date of receipt of application, in that eventuality, candidate belonging to said area cannot be considered under that category because it is a status conferred later in point of time.

4. The petitioner being resident of backward area is substantiated by the certificate issued by the prescribed authority, i.e., Tehsildar, Ramnagar on 31.03.1999 under Jammu and Kashmir Reservation Rules, 1994 notified vide SRO 126 which shows that village Garhsamna Banj where the petitioner resides was and is a backward area.

5. Under Rule 6 of the said Rule, “backward area” has been defined to mean the villages/areas declared as socially and educationally backward vide SRO 271 dated 22.08.1988 as amended from time to time, the list of villages which include Garhsamna Banj appears in Annexure-C appended to said SRO. On such basis, Tehsildar being the competent authority has issued certificate in favour of the petitioner in the year 1999.

6. Jammu and Kashmir Reservation Rules, 2005 were notified vide SRO 294 dated 21.10.2005 and in terms of Rule 37 earlier rules/notifications/orders were repealed. In these rules, “backward area” has been defined in Section 2(v) which reads as under :-

“(v) “Backward Area” mean the villages/areas declared as socially and educationally backward vide SRO 272 dated 03.07.1982 and SRO 271 dated 22.08.1988 as amended from time to time, forming Annexure-“B” to these rules.”

7. Petitioner again applied for issuance of certificate of being resident of backward area under these Rules before the competent authority, i.e., Tehsildar, Majalta on 24.12.2007, same was rejected on 24.07.2008. As against that order of Tehsildar, Majalta appeal under Rule 25 of the said Rules was preferred before the appellate authority, i.e., Deputy Commissioner, Udhampur. Vide order dated 19.12.2008, the appellate authority accepted the appeal while setting aside order. Tehsildar, Majalta was directed to conduct fresh inquiry, which culminated in issuance of certificate of RBA in favour of the petitioner on 10.06.2009. Immediately thereafter, the petitioner had submitted the certificate to respondent no.5- SSRB, which is admitted to have been received as is clearly reflected in the reply filed by respondent no.4.

8. Advertisement Notice has been issued on 19.11.2007, last date for receipt of application was 19.12.2007, which had been later on extended. The petitioner had applied for issuance of certificate under Reservation Rules 2005 on 24.12.2007.

9. Earlier village Gargsamna Ban was within the limits of Tehsil Ramnagar that is why on 31.03.1999, Tehsildar Ramnagar had issued RBA certificate in favour of the petitioner. Subsequently on creation of Majalta as Tehsil, it fell within the jurisdiction of Tehsil Majalata as is also specifically mentioned in order dated 19.12.2008 passed by the Deputy Commissioner, Udhampur and it is because of that position, Tehsildar Majalta issued the RBA certificate on 10.06.2009 in favour of the petitioner. Position of village having been declared backward has not undergone any change from 1994.

10. The petitioner had failed to produce the RBA certificate for the reasons which were beyond his control. He had applied in time but Tehsildar rejected his application then the appellate authority allowed the appeal and after fresh inquiry Tehsildar Majalta has issued the certificate. Under such circumstances, the petitioner would not be deprived of the benefit of being resident of backward area. On production of RBA certificate, his merit should have been considered for selection under RBA category.

11. Division Bench of this Court in case **Surjeet Singh Bali v. State of J&K and others** reported in **2007(2) JKJ 382** has settled the similar issue. Para No.17 is relevant, it is apt to quote:-

“17. The RBA status is conferred by residence/domicile. The private respondents were having this status even at the time of submission of application forms but were not in possession of the certificates concerned, which came to be issued in their favour after filing of the application forms and before the examination came to be held. They have mentioned in the application forms that they belong to RBA category. While making this observation, we are supported by what was said by this Court in the case reported as 2002(1) SLJ 234, J&K Public Service Commission and another v. Ms. Rimpi Ohri and another. It is profitable to reproduce para 27 of the aforesaid judgment as under :-

27... The requisite qualification on the last date of application is relatable to educational qualification. In the case of respondent, we have already held that she was a resident of LAC, at the time of submission of the application and continue to be so even today. If that is so, she was

definitely possessing the qualification with regard to the resident of LAC, at the time of closing date of the application i.e. 16.03.1999. Non renewal of certificate would not alter the status of her residence if otherwise she was factually resident of Line of Actual Control. The factum of the respondent/writ petitioner being the resident of Line of Actual Control is not denied by the applicant."

12. Status of petitioner being resident of backward area even prior to issuance of Advertisement Notice has not undergone any change. He having applied under category RBA and having produced RBA certificate though later in point of time for the reasons beyond his control was required to be placed in the selection list under category RBA at an appropriate place as having secured more points than the last selected candidate under said category.

13. On presentation of this writ petition vide order dated 15.07.2009, respondents were directed to keep one post of Junior Engineer (Elect.) Grade-II vacant till next date of hearing/filing objections. Respondent no.4 (Commissioner/ Secretary to Government, Power Development Department, Civil Sectt.) in reply has stated that 11 vacancies were reserved in view of the directions passed in writ petitions SWP No. 1180/2008 and SWP No. 1149/2009, i.e., writ petition of the petitioner. The petitioner having made the grade is required to be recommended as against one post reserved under category RBA for appointment.

14. Viewed thus, this petition is allowed. Respondent no.5 SSRB shall take steps for including the petitioner in the select list under RBA category and to recommend him for appointment, based on which respondents nos.1 to 4 shall finalize the process of appointment in accordance with rules. Said exercise be undertaken by respondents at their respective levels and completed within a period of six weeks from the date of receipt of copy of order.

15. Disposed of as above along with connected CMA No.1531/2009.

(Mohammad Yaqoob Mir)
Judge

Jammu
21.02.2014
'Madan'PS