

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No.879/2014
CMA No.1149/2014
C/W
SWP No.1144/2014
CMA No.1498/2014
Date of Decision: 28.04.2015

Ravinder Kour & ors. Vs. State of J&K & ors.
Farheen Akhter & ors. Vs. State of J&K & ors.

Coram:

Hon’ble Mr. Justice Mohammad Yaqoob Mir

Appearing counsel:

For the Petitioner(s) : M/S: Abhinav Sharma & B. R. Manhas (for petitioners of SWP No.879/2014) & Mr. Ajaz Choudhary (for petitioners of SWP No.1144/2014)
For the Respondent(s): Mr. R. A. Jan, AG with Mr. K. M. Bhatti & Ravinder Sharma.

i)	Whether approved for reporting in Journal/Digest:	YES/NO
ii)	Whether approved for reporting in Media/Press:	YES/NO/OPTIONAL

1. Vide advertisement notice Nos.03 of 2012 dated 28.12.2012, 05 of 2013 dated 02.03.2013 and 06 of 2013 dated 10.05.2013, as against various posts, which include District Cadre posts of Teachers, applications were invited from the eligible candidates. In terms of said three advertisement notices, following number of posts of teachers were to be filled up:

Name of the District	Advertisement Notice No.03 of 2012	Advertisement Notice No.05 of 2013	Advertisement Notice No.06 of 2013
Jammu	30	744	466
Kathua	19	499	223
Udhampur	10	237	225
Samba	6	182	101
Rajouri	24	409	341

2. The qualification prescribed, as reflected in the advertisement notices, is quoted here-under:

- (i) **10+2. Preference will be given to the candidates having higher qualification and those having passed M. Ed, B. Ed and Diploma ETT/NYY."**

3. Writ petitioners claim to have applied for the said posts in the following manner:

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- (i) Petitioner Nos.1 to 5 applied pursuant to all the three notifications i.e. 03 of 2012, 05 of 2013 and 06 of 2013 in District Cadre Jammu;
- (ii) Petitioners No.6 to 10 applied in response to advertisement Notice No.03 of 2012 and 05 of 2013 District Cadre, Jammu;
- (iii) Petitioner Nos.11 to 15 applied pursuant to advertisement notice No.05 of 2013 for District Cadre, Jammu;
- (iv) Petitioners Nos.16 to 30 applied pursuant to advertisement notice No.03 of 2012, 05 of 2013 and 06 of 2013 for District cadre, Jammu;
- (v) Petitioner Nos.31 to 39 applied pursuant to advertisement notice No.05 of 2013 and 06 of 2013 for District Cadre, Kathua;
- (vi) Petitioner Nos.40 and 41 applied pursuant to advertisement notice No.05 of 2013 for District Cadre, Kathua;
- (vii) Petitioner Nos.42 to 44 applied in terms of all the three advertisement notices for District Cadre Samba;
- (viii) Petitioner Nos.45 and 46 applied pursuant to all the three advertisement notices for District Cadre, Rajouri;
- (ix) Petitioner Nos.47 and 48 applied pursuant to advertisement notice Nos.05 of 2013 and 06

of 2013 District Cadre, Rajouri.

- (x) Petitioner No.49 applied pursuant to advertisement notice No.05 of 2013 District Cadre Udhampur.

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Petitioners applied pursuant to all the three advertisement notices respectively for District Cadre Jammu and Rajouri.

4. Vide notice dated 13.08.2013, dates for objective type written test were scheduled on 14th and 15th September, 2013 for all posts as advertised vide aforesaid three advertisement notices. Petitioners have also taken the written test. A shortlist of the candidates was issued which was published in the newspaper Daily Excelsior in its issue dated January 31, 2014 in which all the petitioners figure.

5. From the pleadings it appears that number of representations have been filed which were considered by the respondent Board, as a result whereof the errors which had crept in were rectified and a revised shortlist was issued. Contents of the notice issued in this regard reads as under:

Government of Jammu and Kashmir
J&K Services Selection Board Jammu
(www.jkssb.nic.in)

NOTICE

Subject: Revised shortlist of candidates who have qualified for interview for the post of Teachers, various Districts, in pursuance to the Advertisement Notification Nos.03 of 2012, 02 of 2013 and 05 of 2013 respectively.

Whereas, Jammu and Kashmir Services Selection Board in terms of following notifications invited applications for the eligible/aspiring candidates for Teacher posts for various Districts:

03 of 2012 dated 28.12.2012

02 of 2013 dated 16.02.2013

05 of 2013 dated 02.03.2013

Whereas, as per the contents of the notification Nos.05 of 2013, dated 02.03.2013 for the same post, (Para 8) inter-alia, stipulates as under:

“Candidates who have applied in response to the notification No.03 of 2012, dated 28.12.2012 were to be considered for the posts/slots advertised vide notification No.02 of 2013 dated 16.02.2013 and 05 of 2013 dated 02.03.2013. Similarly, candidates who have applied in response to the notification No.02 of 2013 dated 16.02.2013 have to be considered for the slots advertised in terms of notification No.05 of 2013 dated 02.03.2013 subject to age eligibility criteria, as on 1st of January of the respective calendar year.”

Whereas the objective type written examination for the posts, where basic qualification was 10+2 including those posts advertised vide aforementioned notifications, was held on 17.09.2013.

Whereas the Board in terms of notification issued vide No.SSB/Secy/Sel/2014743-54 dated 30.01.2014, shortlisted 21862 candidates provisionally for the purpose of interview/viva-voce for the Teacher Posts for various Item Nos. in the above mentioned notifications.

Whereas, soon after the publication of the said list it was noticed that an error has crept-in-advertently during the process of result formulation with respect to notification No.03 of 2012 dated 28.12.2012, 02 of 2013 dated 16-02-2013 and 05 of 2013 dated 02-03-2013. Meanwhile, as many as 404 representations were received from the candidates, requesting therein to have a fresh look on the merit position in view of the notice issued vide endorsement no.SSB/Adm/409-14-2013 dated 22-02-2013 and Advertisement Notice No.05 of 2013 dated 02-03-2013.

Whereas, while examining the representations/relevant records, it has come to the fore that the following error has crept-in-advertently during the process of result formulation:

“The candidates who have applied for notification No.05 of 2013 dated 02.03.2013 have also been considered for the slots/posts advertised vide earlier notification No.02 of 2013 dated 16.02.2013. Similarly, the candidates who have applied for the posts advertised vide notification No.02 of 2013 dated 16.02.2013 and 05 of 2013 dated 02.03.2013 have also been considered for the earlier slots of notification No.03 of 2012 dated 28.12.2012”.

Whereas, the issue was deliberated upon at length in the Board Meeting held on 20th of February, 2014 and it was unanimously agreed to rectify the discrepancy/error so crept-in-advertently at an earliest as per the admissible parameters/rules and in the light of the contents of the advertisement notifications.

Whereas, the error so crept-in has now been rectified strictly in accordance with the relevant rules/contents of the notification.

Now, therefore, in view of the situation enumerated heretofore, the revised list of candidates who have qualified to be called for interview (District wise/item wise pertaining to Notice No.03 of 2012 dated 28.12.2012, 02 of 2013 dated 16.02.2013 and 05 of 2013 dated 02-03-2013 respectively) for the post of Teacher is hereby published as per Annexure “A” for information of general public/aspirant candidates. It is further notified that there is no change with respect to the candidates shortlisted earlier vide this office endorsement No.SSB/Sel/Secy/ 2014/743-54 dated 30-01-2014 for various items of Notification No.06 of 2013 dated 13-05-2013.

The aspiring candidates are free to approach to the J&K Service Selection Board for any sort of query/information and can also present their claims for redressal of their grievances, (if any) which will be sorted out expeditiously in accordance with law/rules and as per the contents of the notification(s).

6. In the revised shortlist petitioners did not figure as

according to the respondent-Board they failed to make the grade, hence the instant petitions.

7. Learned counsel for the petitioners had raised various objections vis-à-vis process of selection which include, (1) the respondent Board has not called the candidates for viva-voce in the ratio of 1:5, (2) some of the writ petitioners had responded to all the three advertisement notices as detailed hereinabove but were considered vis-à-vis the posts as advertised in only one advertisement notice.

8. Mr. Jan, learned Advocate General, highlighted that the teachers have been selected who have to impart education, in the litigative process the worst sufferers are the students, all necessary precautions have been taken while issuing the revised shortlist and making the selection. The petitioners have been considered for the posts for which they have applied, there was a common written tests for all the posts, the petitioners have not made the grade, therefore, their writ petitions are liable to be dismissed.

9. In the aforesaid background, learned counsel appearing for the respondent Board was suggested to ask the Board to prepare the list of writ petitioners of these two writ petitions and in a tabulated form it shall be made clear

as to what was their merit position in their written test and what was the cut off merit vis-à-vis last candidate in each of the three advertisement notices which he agreed. The case was adjourned, as such, and was taken up today and learned counsel for the parties were heard at length.

10. Learned counsel for the respondent Board has produced the requisite merit position of the petitioners along with item-wise cut off points obtained in written test in a tabulated form wherein merit position of each candidate has been shown, then the cut off merit vis-à-vis three advertisement notices category wise has also been separately shown. None of the petitioners has made the grade. It is also clear there from that the candidates have been shortlisted in the ratio of 1:5.

11. In conformity with Rule 14 of the J&K Civil Services Decentralization and Recruitment Rules, 2010, as notified vide SRO 375 dated 21.10.2010, the process of selection had been initiated and written test of all eligible candidates has been held. The said Rule provides that the number of candidates to be called for viva-voce shall not be less than three times and more than five times the number of vacancies to be filled up. The respondent Board in the

information, as furnished, has stated that the candidates in the ratio of 1:5 have been called for viva-voce and while taking the vacancy position in the said ratio in the written test petitioners have failed to make the grade, so were not called for viva-voce.

12. When the petitioners have failed to make the grade, to challenge the process of selection after having consciously participated in the process shall be impermissible. It is no more *res integra* that when a person subjects himself to a particular process of selection, on failing to make the grade cannot be permitted to find fault with the process. In this connection, it shall be quite relevant to quote para 9 from the judgment captioned **Madan Lal & ors v. State of Jammu and Kashmir & ors.** reported in **1995 SCC (3) 486:**

"9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of [Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors., \(AIR 1986 SC 1043\)](#), it has been clearly laid

down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

13. Various contentions of the learned counsel for the petitioners regarding defaults made during the process of selection pales into insignificance as no prejudice has been caused to the petitioners. Petitioners have un-necessarily stalled the process of finalization of selection process, their writ petition(s) being without merit are dismissed along with connected CMPs.

14. The merit position of the petitioners as produced by the learned counsel appearing for the respondent Board shall form part of the record of the petition.

(Mohammad Yaqoob Mir)
Judge

Jammu
.04.2015
"Mohammad Altaf"