

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

SWP No. 345/2015
CMP No. MP01/2015

Date of Decision:-28.05.2015

Naziya Aslam & ors.

vs.

J&K Service Selection Board & Ors.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge.

Appearing counsel:-

For the petitioner(s): Mr. Z.A.Shah, Sr. Advocate.

For the respondent(s): M/s M.A.Qayoom, Tasaduq Khawaja,
Advocates.

1. **(a)** Vide advertisement notice No. 03 of 2012 dated 28.12.2012 vis-à-vis various vacancies available in various departments applications have been invited which include 115 posts of Junior Engineers(Civil) State cadre available in PHE/I&FC.
(b) Vide advertisement notice No. 03 of 2013 dated 18.02.2013, vis-à-vis 100 posts of Junior Engineers(Civil) available in PHE and I&FC department applications have been invited.
(c) Again vide advertisement notice No. 11 of 2013 dated 24.01.2013 vis-à-vis various vacancies available in various departments applications have been invited which include 418 posts of Junior Engineers (Civil) State cadre in the department of Public Works Department (R&B).
2. Amongst others petitioners have also applied.

3. The criteria notified for the post of Junior Engineers (Civil), where basic qualification is:-

“Indian University Degree in Civil Engineering or AMIE Section (A&B) India/ 3 years Diploma in Civil Engineering from Government recognized Institute.

i. Marks obtained in the written test out of 150 marks to be proportionately converted into points)

= 73 points

ii. B.E = 05 points

iii. M. Tech = 02 points

iv. Viva-voce = 20 points

Total = 100 points

Note:- (ii) & (iii) across the Board.”

4. The common written examination has been conducted vis-a-vis all the posts referred to in Para 1 above and the points have been awarded to the candidates as per the above referred criteria. In the process petitioners(Diploma Holders) could not make the grade, therefore, have filed the instant petition, praying therein that the criteria adopted by the Board, as notified, be quashed. Furthermore, the respondent-Board be directed to prepare fresh select list of the candidates for the post of Junior Engineers(Civil) without awarding 05 points to degree holders and to subject all the candidates to the common standard of 100 points.
5. The controversy in nutshell is as to whether 05 points as per the criteria awarded to the degree holder Engineers is permissible when the basic qualification is both Degree or 3 years Diploma in Civil Engineering. As per the Schedule II 'A' to the Jammu & Kashmir Engineering Subordinate Service Recruitment Rules 1997.

6. There is no doubt about the fact that the Degree in Civil Engineering or 3 years Diploma is prescribed as basic qualification. It being so whether for award of 05 points, Degree in Engineering can be considered as higher qualification?

Similar question arose in the Service Petition titled ***Mahroof Ahmed & ors. Vs. State & ors. decided on 11.05.2012 reported in 2012(2) JKJ 358 (HC)***. In the said case similar qualification was prescribed as basic qualification. As per the criteria 70 points were for basic qualification, weightage to M.E across the board was fixed as 10 points. There the question arose that the way weightage points have been allocated for M.E being higher qualification, same way for Degree holder Engineers weightage points should have been allocated in the criteria so fixed. It was concluded in the said judgment that the Degree in Civil Engineering equated with Diploma for basic qualification negates the grant of weightage to Degree being higher qualification which otherwise is permissible in terms of Rule 14 of 2010 Rules, therefore, basic qualification as prescribed is required to be re-examined in the same background and the basic qualification as prescribed in the Schedule II 'A' to 1997 Rules, may have to be amended so as to bring it in conformity with the Rule 14 of the 2010 Rules, that till date has not happened.

7. The basic qualification continues to be so, therefore, in the context of the said basic qualification, higher qualification in terms of the Rule 14 of 2010 Rules is and has to be taken as M.E or any other higher qualification, therefore, award of 05 points across the board to the Degree holder Engineers until it continues to be the basic qualification along-with Diploma shall not be permissible.
8. Until Schedule II 'A' to 1997 Rules is amended to the extent of providing basic qualification only as 3 years Diploma in Civil Engineering from the Government recognized Institute till then Degree in Civil Engineering being basic qualification cannot be a higher qualification so as to be awarded 05 points across the board because the position of the Degree holder Engineers being higher qualification than Diploma is well taken care of by giving them the post appointment benefit.
9. Two situations can emerge;
 - (i) 05 points are to be deducted out of the marks awarded to all the degree holder Engineers who had competed;
 - (ii) The said 05 points awarded across the board to the Degree holders can also be awarded to the Diploma holder candidates.
10. Mr. Khawaja, learned counsel appearing for the Board(SSRB), would submit that even if 05 points are awarded across the board to the petitioners (Diploma Holders) still hardly one petitioner can make the grade. It is in the same backdrop, application has been filed by some more persons

for being impleaded as petitioners so that they may get some benefit. He in-fact refers to the application bearing No. MP01/2015 wherein 7 candidates have sought their impleadment. After considering the said application, it is found that the said persons are necessary party and are accordingly impleaded as party petitioners so shall figure as petitioner Nos. 11 to 17. This is done so as to avoid multiplicity of litigation. Registry to update the cause title of the petition.

11. According to Mr. Khwaja, the criteria as has been adopted has been followed. The Degree holders being highly qualified as compared to the Diploma holders are entitled to the treatment as has been given to them as warranted under Rule 14 of 2010 Rules.
12. This contention of the learned counsel is not acceptable because one of the basic qualification cannot be treated as higher qualification because that qualification is equated may be rightly or wrongly as per the Rule, therefore, that will remain as basic qualification not higher qualification in that context, therefore, the higher qualification in that context shall be above Degree in Engineering for which weightage is permissible.
13. The second limb of the argument is that even if these 05 points are awarded to the petitioners including the impleaded writ petitioners, hardly one candidate can make the grade. If it be so, the safe course for avoiding unnecessary protraction and disturbance to the selection is that the Board shall award 05 points to the petitioners also across the board; after so awarding if anyone amongst

them makes the grade shall also be selected and recommended for appointment against the available post.

14. The joint contention of all the respondents is that the petitioners knowing fully well the criteria adopted, as has been notified, have taken calculated chance by competing in the process of selection, after having failed to make the grade cannot be permitted to turn round and to challenge the entire process; they in-fact have acquiesced. Whereas on the other hand learned counsel for the petitioners would submit that participation in the examination and failure to make the grade will not divest the petitioners from challenging the process of selection to the extent it runs contrary to the Rule position.
15. In the judgment titled ***Union of India & ors. Vs. S.Vinod Kumar & Ors. 2007 (VIII) SCC 100***, the controversy has been settled, Para 18 and 20 are relevant to be quoted:-

“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same.

20. We are, however, not oblivious that there are certain exceptions to the aforementioned Rules but we are not concerned therewith in the present case.”

16. The exception means that either selection is actuated with *malafides* or statutory provisions have not been followed. It is to be made mention of that when the basic qualification is both 3 years Diploma and Degree as per the Rules then there is no scope for weightage to such qualification because the

Rule makes no distinction in between the two for the purpose of minimum rather basic qualification.

In this connection it shall be quite relevant to quote Para 16 of the judgment rendered in the case

Sanjay Kumar & ors. Vs. Narinder Verma & ors. (2006) 6 SCC 467:-

“16. Having heard the learned counsel on both sides for the different contending parties, we are of the view that the impugned judgment of the High Court needs to be interfered with. As already observed, there was no challenge to the Rules in the writ petition. The learned Single Judge was, therefore, justified in applying the Rules and upholding the selection process made by the State authorities. It was wholly unjustified on the part of the Division Bench to have interfered with the selection process on the basis of the criteria which were not laid down in the Rules and that too on an erroneous appreciation of the Rules. The High Court failed to see that the Rules made no distinction, whatsoever, between degree-holders and diploma-holders at the stage of recruitment for the purpose of minimum qualifications. In other words, no distinction was made between the two categories at the stage of recruitment, but a greater weightage was given to the degree-holders in the post-recruitment period in the form of a higher starting pay and also lesser number of years of service requirement for qualifying for promotion to the higher post. We agree with the contention expressed by the learned counsel for the appellants that there was sufficient inbuilt balance maintained between the two categories of candidates and the impugned judgment of the High Court completely throws the Rules out of balance. What the executive did not think fit to do by prescription in the Rules, could not have been done by a judicial fiat.”

(emphasis

supplied)

17. The facts of the present case are similar, ratio of the judgment squarely applies to it, therefore, for throwing challenge to the entire selection process exceptional clause operates because the petitioners herein though have participated in the process but have failed to make the grade, award of 05 points across the board as made mention of in the criteria runs contrary to the Rule position, therefore, challenge by such candidates is not barred, by estoppel or by Rule of acquiescence.
18. Mr. Khawaja, learned counsel for the Board(SSRB), next contended that all the selected candidates have not been impleaded as party respondents but that argument pales into insignificance as the petitioners have not sought their selection or appointment to be quashed nor have claimed anything against them.
19. Mr. Qayoom, learned counsel appearing for respondents 4 to 45, submits that earlier filed petition SWP No. 353/2015 titled ***Danish Shah vs. State & ors.***, has been disposed of on 04.03.2015 with the direction to the respondents that in case any selected candidate figures in more than one list shall be given option for being appointed as against one; after receipt of the option appointment order shall be issued in favour of the selected candidate; thereafter to work out vacancy position which will become available; and thereafter to request the Board(SSRB) to update/reframe the merit list as also the waiting list and to make fresh

recommendations accordingly. When it is so, the selection so made is not now open to question.

20. Meeting this argument, Mr. Shah, learned Senior Advocate, appearing for the petitioners, would submit that the contention there was regarding some of the selected candidates who figured in the list prepared vis-à-vis all the three advertisement notices, such candidates can opt only for one post and other posts would become available for which the candidates in queue according to the merit had the preference.

The same issue as additionally raised in the instant petition has already been taken care of by the said judgment and it is in the same context that the learned counsel for the Board had stated that after undertaking the exercise of awarding 05 points across the board to all the Diploma holder candidates and then to work out the vacancy position which would accrue in view of the selection of the candidates who appear in more than one list.

21. Mr. Qayoom, next contended that it is not open for the petitioners to question the award of 05 points for Degree in Engineering, supporting this contention has relied upon the judgment passed by the Division Bench of this Court in case ***Viney Kumar Gupta & ors. Vs. Pankaj Kumar***, reported in ***2013(1) SLJ 89***.

In the said reported judgment the basic qualification as was prescribed for recruitment in the relevant year the Degree in

Engineering was not included, however, Rules were amended after recruitment process had been completed where-under in the year 2008 Degree in Engineering was included in the basic qualification. Based on said fact situation it was held that the Rule position as it exists prior to 2008 had not been challenged, therefore, in that context 10 points awarded to the Degree in Engineering was permissible as being the higher qualification, whereas in the present case the position is altogether different i.e. basic qualification as was notified in the advertisement notice included Degree in Engineering so in that context is not to be treated as higher qualification for award of 05 points across the board.

22. While summing up what would emerge is that;
- a) The basic qualification prescribed while inviting applications for the post of Junior Engineers(Civil) included the Degree in Engineering so in that context Degree in Engineering for the purpose of award of 05 points across the board was unwarranted.
 - b) The petitioners no-doubt have actively participated in the selection process and have taken calculated chance, failure to make the grade, would not entitle them to challenge the whole process but for exceptional clause i.e. in the criteria 05 points allocated across the board for the Degree in Engineering was not permissible. As per Rule 14 of J&K Civil Services Decentralization and Recruitment Rules 2010, weightage for higher qualification in the discipline

concerned is allowable to the extent Board may deem it appropriate but the higher qualification for the purpose of weightage has to be something more than basic qualification. The award of 05 points as per criteria for one of the basic qualification in the context of Rule 14 of 2010 Rules, is not permissible. When it is so the question of acquiescence or question of divesting the petitioners from challenging the selection after participation does not arise.

c) During the pendency of the writ petition the exercise is stated to have been undertaken by the Board(SSRB) so as to ascertain as to whether after awarding 05 points to the petitioners(Diploma Holders) as have been awarded to the Degree holders, whether anyone among them can make the grade coupled with the fact that vis-à-vis three lists pertaining to three advertisement notices, after removing the duplicacy whether any of the petitioners can make the grade it is said that one candidate can hardly make the grade.

23. In the context of the stated reasons, facts and the position of law, instead of upsetting the whole process of selection including appointment of 164 candidates, the safest course for addressing the grievance of the petitioners is that the Board (SSRB) will undertake the exercise where-under 05 points across the board shall also be awarded to the petitioners(Diploma Holders) and added to their points as they have already secured. Further after removing duplicacy i.e. in case any candidate is selected and figures in more than one list vis-à-vis

three advertisement notices, as a result thereof to work out the vacancy position. The respondents shall also ascertain as to whether anyone amongst the petitioners would make the grade; if anyone makes the grade he/she shall also be selected and recommended for appointment as against the posts as may become available on above said exercise, even if required, to the exclusion of the selected/appointed candidates as may be inferior in merit. Respondents shall undertake the said exercise and finalize the same within a period of six weeks from the date copy of this order is served upon them.

24. The selection and appointment of the already selected candidates shall be carried into effect, however, same shall be subject to outcome of the exercise to be undertaken to the extent indicated in Para 23 above.
25. Petition accordingly disposed of along-with connected CMPs.

(Mohammad Yaqoob Mir)
Judge

Srinagar
28.05.2015
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