

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

Case: SWP No.2216/2010, MP Nos.420/2013, MP No.4313/2012, MP NO.4231/2012, MP NO.3809/2010, MP NO.01/2017
c/w
SWP No.3097/2010, **MP Nos.1/2017**, 1/2016, 449/2011, 2397/2013
SWP No.2198/2010, MP No.492/2012
SWP No.2542/2010
SWP NO.2195/2010, MP No.357/2011
Contempt(SWP) No.189/2011 in SWP No.2198/2010.

Date of order: 31.05.2017.

Shashi Parihar and Ors.	Vs.	State and Ors.
Zahoor Ahmed Dar	Vs.	State and Ors.
Varun Gupta	vs.	JKSSB and Ors.
Darshan Lal	vs.	JKSSRB and Ors.
Shaista Tabassum	vs.	State and Ors.
Varun Gupta	vs. Ashok Kumar Koul, Dir Sheep Husbandry	

Coram:
Hon’ble Mr. Justice Alok Aradhe, Judge

Appearing counsel:

For the petitioner/appellant(s)	:	Mr. S. Kour, Sr. Advocate with Mr. Bandana Kumari, Advocate. Mr. C M Koul, Advocate.
For the respondent(s)	:	Mr. Raman Sharam, Dy. AG. Mr. Sanjeev Padha, GA. Mr. Abhinav Sharma, Advocate. Mr. P N Bhat, Advocate. Mr. M R Quereshi, Advocate. Mr. Rahul Pant, Advocate. Mr. Dhiraj Choudhary, Advocate.

i/	Whether to be reported in Press/Media	:	Yes/No
ii/	Whether to be reported in Digest/Journal	:	Yes/No

With the consent of learned counsel for the parties, the matter is heard finally.

In this bunch of petitions, the core issue which arises for consideration is whether the official respondents have changed the criteria with regard to process of selection after preparation of tentative select list for the posts of Stock Assistants in Animal and Sheep Husbandry Department. In view of commonality of the issue

involved in this bunch of writ petitions, they are heard analogously and are being decided by this common order. For the facility of reference, the facts from SWP No.2216/2010 are being referred to.

2. By notification dated 05.10.2007, published on 29.05.2008, applications were invited for posts of Stock Assistants in Sheep and Animal Husbandry Department in Districts Doda, Udhampur, Kathua, Poonch and Rajouri. In the aforesaid notification, the minimum qualification for the posts in question was prescribed as Matric with Science having Stock Assistant Training Certificate. The criteria for filling up the posts of Stock Assistants was also prescribed, which is reproduced below for the facility of reference:

Matric with Science	:	40 Points
10+2	:	05 Points
Graduation	:	10 Points
Diploma	:	15 Points
Post Graduation	:	10 Points
Viva	:	<u>20 Points</u>
Total	:	<u>100 Points</u>

3. The petitioners as well as private respondents and other candidates submitted their applications and were called for interview vide notification dated 29.05.2008. Thereafter, a provisional select list was published, which included the names of the petitioners. After publication of the provisional select list, some candidates submitted representation before J&K SSRB on the ground that the department has indicated two sets of criteria for the

same posts separately for both the divisions which read as under:

“Jammu Division: Matric with Science having
Stock Assistant Training Certificate in Sheep
Husbandry.

Kashmir Division: 10+2 with Science.”

4. Thereafter, notice dated 06.09.2010 was issued by Secretary of the J&K SSRB in which it was stated that in the advertisement notices issued for Jammu Division as well as Kashmir Division, different qualifications have been prescribed for the same posts and, therefore, the matter was taken up with Animal and Sheep Husbandry Department vide Letter dated 14.03.2010 and the A & SH Deptt. clarified that the prescribed qualification for the post of Stock Assistant is Matric with Science instead of 10+2 with Science under the Jammu and Kashmir Animal and Sheep Husbandry (Subordinate Services) Recruitment Rules, 1974. Therefore, the Board reconsidered the provisional select list in respect of six districts of Jammu Division and reframed the criteria as follows

Matric	:	55
10+2	:	05
Graduation	:	10
Diploma	:	10
Post Graduation	:	10
Viva	:	20
Total	:	100

5. In the aforesaid factual background, the petitioners have approached this Court.

6. In the writ petitions, the petitioners seek quashment of notice dated 06.09.2010 as well as revised provisional select list published in Daily Newspaper dated 17.09.2010, by which the respondents have altered the criteria for the post of Stock Assistant and to fill up the posts of Stock Assistants in the Department of Animal and Sheep Husbandry in accordance with the criteria fixed in the notification published on 28.05.2008.

7. Learned Senior Counsel for the petitioners in SWP No.2216/2010 and SWP No.3097/2010 submitted that in advertisement notice dated 28.05.2008, the qualification prescribed was Matric with Science having Stock Assistant Training Certificate. It is further submitted that qualification of having Training Certificate in Stock Assistant is relatable to working of the petitioners on the posts of Stock Assistants. The respondents after preparation of the provisional select list have altered the criteria for selection, which is not permissible in law. In support of her submissions, learned Senior Counsel for the petitioners has referred to decisions of this Court in the cases of **Yogesh Bamba v. State and Ors, 2010(II) SLJ 12**, **Bashir Ahmed Mantoo v. State of J&K and ors, 2009(2) JKJ 86 [HC]**, **Firdousa Akhter and Ors. V. State and Ors, 2011(I) SLJ 251**, and has also placed reliance on the decisions of the Supreme Court in the cases of **Gopal Krushna Rath v. M.A.A. Baig and Ors, (1999) 1 SCC 544**,

Madan Mohan Sharma and anr. v. State of Rajasthan and Ors,
AIR 2008 SC 1657, K.Manjusree vs State Of A.P. & Anr;
2008 (3) SCC 512, Kishor Kumar & Ors v. Pradeep Shukla and
Ors.,2012 AIR SCW 2261, Hemani Malhotra v. High Court of
Delhi, (2008) 7 SCC 11, Tamil Nadu Computer Sc. B.Ed. G.T.
Welf, Society v. Higher Sec. Scl. Computer Tech. Assn. & Ors,
2010 AIR SCW 2825, 2012 .

8. Mr. C M Koul, learned counsel for petitioners in SWP No.2198/2010, SWP No.2195/2010 and SWP No.2542/2010 has submitted that the mark awarded under the head of Stock Assistant Training Certificate have been added under the head of Matric plus Science without any logic or reason. It is further submitted that no process was adopted by the official respondents for changing the criteria for evaluation of the candidates. It is also submitted that once the criteria is evolved and the candidature of the candidates is assessed on the basis of the aforesaid criteria and acting on the criteria, a tentative select list is published, later on it is not open to the official respondents to alter the criteria. In support of his submissions, learned counsels for the petitioners have placed reliance on the decisions of the Supreme Court in the cases of **Maharashtra State Road Tpt. And Ors. vs Rajendra Bhimrao Mandve & Ors, (2001) 10 SCC 51** and **K. Manjusree v. State of Andhra Pradesh and Another,**

(2008) 3 SCC 512.

9. On the other hand, Mr. Abhinav Sharma, learned counsel for some of the private respondents has submitted that in the advertisement notice dated 29.05.2008, the qualification for the posts in question was prescribed contrary to the rules and there is no estoppel against the law. It is further submitted that as soon as the aforesaid mistake came to the notice of the J&K SSRB, the mistake was rectified and no prejudice has been caused to any of the candidates including the petitioners as well as private respondents, inasmuch as their candidature has been evaluated on the basis of same criteria. It is further submitted that the qualification of Stock Assistant Training Certificate is not required under the J&K Sheep Husbandry (Subordinate) Service Recruitment Rules, 1987. Lastly, it is urged that mere inclusion of their names in the provisional select list does not clothe the petitioners with any legal right to seek writ of mandamus for their appointment on the posts in question and if the mistake would not have been rectified, two different criteria would have been prescribed in Jammu Division as well as Kashmir Division for the same posts.

10. Mr. M R Quereshi, learned counsel for some of the private respondents has supported the submissions made by Mr. Abhinav Sharma, learned counsel for private respondents and has

submitted that in the event of success of the writ petitions, the respondents be granted at least the benefit of notional seniority retrospectively.

11. Mr. P N Bhat, learned counsel for respondent No.20 in SWP No.3097/2010 submitted that even as per the earlier criteria prescribed under the notification dated 29.05.2008, the aforesaid respondent is more qualified than the petitioners and, therefore, is entitled to be appointed on the post in question. In support of their submissions, learned counsels for private respondents have placed reliance on decision of the Madhya Pradesh High Court in the case of **State of Madhya Pradesh v. Raghuveer Singh Yadhav, 1994 (6) SCC 151**, decisions of the Supreme Court in the cases of **Union of India and ors. v. N R Parmar, 2013 (13) SCC 340** and **Yogesh Yadhav v. Union of India and ors., 2013 AIR (SCW) 4804**.

12. I have considered the submissions made by learned counsels for the parties and have perused the record. The moot question which arises for adjudication in this bunch of writ petitions is whether by issuance of notice dated 06.09.2010, the official respondents have changed the criteria for selection after the provisional select list was published. It is well settled in law that once the process of selection of recruitment begins, the criteria for selection cannot be changed. In the case of **Maharashtra**

State Road Transport vs Rajendra Bhimrao Mandve

& Ors, (2001) 10 SCC 51, the Supreme Court held that rules of the game meaning thereby that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. Similar view was taken up by the Supreme Court in the case of **K. Manjusree (supra)**.

13. At this stage, it is pertinent to note that J&K Sheep Husbandry (Subordinate) Service Recruitment Rules, 1987. Schedule II-(A) prescribed the qualification for the post of Stock Assistant, which is reproduced below for the facility of reference.

IV	A	Stock Assistant/Jr. Lab. Asstt./ Jr. Grader / Rukh Overseer.	410-700	Matric with Science	40% by promotion from Class VI category A subject to the condition that the promottee is a matric with science and has 2 years experience in that class	60 % by direct recruitment Matric with Science.
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In the instant case, the criteria which was prescribed for Jammu Division as well as Kashmir Division as under:

- “**Jammu Division:** Matric with Science having Stock Assistant Training Certificate in Sheep Husbandry.
- Kashmir Division:** 10+2 with Science.”

14. Thus, it is evident that the criteria which was fixed by the official respondents for Kashmir Division for recruitment on the post of Stock Assistant was not in consonance with the rules

whereas the same was in consonance with the rules so far as Jammu Division is concerned. The J&K SSRB on receipt of the representation detected the mistake which had crept in the advertisement notice insofar as it prescribes for the qualification. Accordingly, the mistake was rectified vide notice dated 06.09.2010 and the criteria was prescribed, which was in consonance with the Rules. In any case, for the post of Stock Assistant, the qualification for Jammu Division and Kashmir Division has to be the same and could not be different. Thus the criteria was prescribed in consonance with the Rules and 15 marks which were to be awarded for Stock Assistant Training Certificate were added under the head of Matric with Science qualification. Besides that, there was no other alteration in the criteria for evaluation of the candidature of the candidates. Thus, in the fact situation of the case, it cannot be said that there was any alteration in the selection criteria. It is also pertinent to note that mere inclusion of the petitioners' names that too in the provisional select list does not confer any indefeasible right on them to seek appointment. **[See. Union Territory of Chandigarh vs. Dilbagh Singh, AIR 1993 SC 796] . Also [See; Balakrushna Behera and another v. Satya Prakash Dash, (2008) 1 SCC 318]**. Besides that, this Court cannot direct holding of selection, which dehors the criteria prescribed in the Rules. It is also pertinent to note that no prejudice

has been caused to the candidates as their candidature has been assessed on the basis of the same criteria.

15. In view of preceding analysis, I do not find any merit in the writ petitions. The appointment of the private respondents whose names were included in the final select list was stayed on account of interim orders passed by this Court, as a result of which they were deprived of their right to seek appointment. It is well settled in law that on account of an order passed by the Court, nobody should suffer prejudice, therefore, I deem it appropriate to direct that private respondents whose names appear in the final select list shall be given appointment with retrospective effect, that is, the date from which their names were included in the final merit list. However, the aforesaid benefit shall only be for the limited purpose of seniority and pension and the private respondents shall not be entitled to any monetary benefits.

With the aforesaid directions, the petitions are disposed of.

Contempt(SWP) No.189/2011:

In view of order of dismissal of the writ petition, namely, SWP No.2198/2010 passed today, no orders are required to be passed in this contempt petition. The same is, accordingly, closed.

(Alok Aradhe)
Judge

Jammu,
31.05.2017
Raj Kumar