

HIGH COURT OF JAMMU AND KASHMIR-
SRINAGAR

Case No: SWP 463/2014

Dated : 19th of June, 2018

SHEERAZ AHMAD RATHER

VERSUS

STATE AND ORS.

ORDER SHEET

CORAM:

HON'BLE *MR. JUSTICE M.K.HANJURA- JUDGE*

- | | | |
|-----|---|---------------|
| i. | <i>Whether to be approved for reporting in NET :</i> | <i>Yes/No</i> |
| ii. | <i>Whether to be approved for reporting in Digest/Journal :</i> | <i>Yes/No</i> |

FOR THE PETITIONER/s : MR. M.ASHRAF WANI

FOR THE RESPONDENT/s: MR. B.A.DAR, Sr.AAG

01/ The petitioner, implores for the grant of a writ of Certiorari in quashing the appointment of the private respondents selected under the RBA category to the posts of Constables in the J&K Executive Police in district, Kulgam. A writ of mandamus is also sought for commanding the official respondents to select and appoint the petitioner under the RBA category as a Constable in the J&K Executive Police pursuant to the advertisement Notice No. PERS-A-21/2010/14804-903 dated 07-04-2010.

02/ The facts that are essential for the decision of the matter on hand are that the petitioner belongs to RBA category. He responded to the advertisement Notice bearing No. PERS-A-21/2010/14804-903 dated 07-04-2010, issued by the respondent No.2, whereby applications on prescribed forms, were invited from the permanent residents of J&K, for filling up the posts of constables in J&K Executive Police. The petitioner fulfilled all the conditions and the criteria laid in the advertisement notice for being selected/appointed to the said post. The petitioner successfully completed the physical as well as the outdoor test conducted by the respondents. The height test of the petitioner, which is a prerequisite for being

selected/appointed as Constable, was also conducted and it was found that the petitioner's height is 5' x 8" and the chest is 32" (unexpanded) and more than 33" (expanded). It is stated that keeping in view the above criterion, the petitioner was the most desirable, meritorious and best suited candidate to be selected and appointed to the post of a Constable in the Executive Police. It is stated further that the petitioner earned 26 marks/points, i.e. 15 marks/points for academic qualification and 11 marks/points for height.

03/ It is further stated that the Armed Police hqrs., J&K, Jammu, vide order No. 51 of 2011 dated 10-02-2011, issued a select list of the Constables for the districts of Anantnag, Kulgam, Pulwama and Shopian and all the selected candidates were directed to report to the Inspector General of Police, Kashmir, Srinagar, along with their testimonials/additional qualification/professional certificates within 15 days. The Petitioner obtained 26 points/marks in the RBA category, which was the lowest cut off merit for district Kulgam. However, in case of a *tie* between the candidates, the elder one (senior in age) had to be selected. The petitioner being senior in age than the private respondents, ought to have been selected/appointed, but to the utter dismay of the petitioner, he was ignored. It is further stated that the petitioner approached the respondents to enquire about the cause of the denial of his selection to the post of constable, but to his surprise, he was told that he had not attached the RBA certificate with the application form. The petitioner has stated further that the fact remains that apart from stating in the application form that he belonged to the RBA category, he had also attached a photocopy of the same to the application form. Besides, at the time of filing of the application form, the annexures to the application form were checked by the respondents and it was only thereafter that the application form was

entertained. The petitioner has further stated that the RBA category certificate has been removed illegally from the application.

04/ It is stated further that by denying the right of consideration to be selected for the post of Constable under the RBA category, the respondents have infringed the rights of the petitioner guaranteed to him under articles 14 & 16 of the Constitution of India as envisaged under the Reservation Act. The petitioner has further stated that the respondents had not reflected the total number of posts in the advertisement notice that had to be filled up, which gave them an unbridled power to make the appointments, which makes the advertisement notice itself bad in law. The petitioner has finally prayed that the writ petition be allowed and the prayer granted.

05/ The respondent NOs. 1 to 4 have filed the objections, wherein it is stated that none of the legal or constitutional rights of the petitioner have been violated in any manner whatsoever. The petitioner has raised mixed questions of the laws and the facts, which cannot be adjudicated upon by this Court. The petitioner neither annexed his RBA certificate with the application form nor did he produce the same before the Recruitment board. Therefore, his case was treated in the open merit category, where he trailed behind as the cut off merit in the open merit category was 27 points/marks. The petitioner having obtained only 26 points/marks, did not qualify for being selected to the post of Constable in the J&K Executive Police. It is further stated in the objections that the reason for not stating the number of posts to be filled up in the advertisement notice was that the recruitment process takes a pretty long time and there is always a chance that some more posts become available either by way of promotions or creation of such posts by the Government. It is further stated that the petitioner did not challenge the advertisement notice

prior to filing of his application form or before participating in the recruitment process. The respondents have finally prayed that the writ petition, being meritless, deserves to be dismissed in limine.

06/ Heard & considered.

07/ The moot question that arises for consideration in this petition is whether the petitioner could have been disqualified by the respondents from holding the post of a Constable on the sole ground that he did not produce the RBA Certificate before the Competent Authority at the time of filing the application form in response to the Advertisement Notice. and the answer to this question is a big “No” in view of the law laid down by the Division Bench of this Court in the case of **J&K Public Service Commission & Another v. Ms. Rimpi Ohri and Another** reported in **2002 (1) SLJ 234**, wherein it has been held as under:

“Constitution of India Articles 15 & 16; J&K Reservation Rules Rule 34: Service Law Appointment:- Consideration for appointment sought by a candidate against reserved category LAC (resident of Line of Control). Consideration denied on the ground that certificate produced by her had not been renewed and the renewed certificate was lately produced held even after the expiry of the validity period of two years as contemplated in sub rule (1) of the rule 34 of J&K Reservation Rules, if a candidate continues to reside in the area, non-renewal of the certificate as contemplated under sub rule (2) of the rules would not disentitle him or her of the reservation benefit for considering his/her case under the reserve category of resident of Line of Actual Control. Non-renewal of certificate does not change the status of the applicant if he or she is actually residing in the area for which the certificate has been issued originally”.

08/ The same view has been repeated and reiterated in the law laid down in **Assad Ullah Khan v. State of J&K** reported in **2001 JKLR 137**, which is reproduced below:

“There can be no dispute with the proposition which is sought to be canvassed by the learned counsel for the petitioner. A candidate must possess the requisite qualifications before the date which is indicated acquisition of these qualifications later on would be of no consequence. The position in this case is entirely different. This is not a case where some qualification has been acquired by the petitioner later on. He was the resident of Backward Area earlier to the issuance of the notification

by the Commission and he continues to be so. As such the eligibility qualification in this regard is not being acquired by the petitioner for the first time after the cut off date. It is only proof regarding this is being furnished on a date which is after cut off date.

.....

A distinction has to be made qua a qualification which is acquired i.e, by a positive effort and a qualification which stands vested by operation of law or by circumstances beyond the human effort such as birth in a family or at a particular place. If this aspect of the matter is taken note of then there is merit in the submission of the learned counsel for the petitioner. The petitioner did possess the qualification is acquired earlier to the issuance of the notification. Only proof was furnished by him afterwards. This could be done in terms of Rule 4 noticed above”.

09/ Applying the ratio of the law laid down above to the facts of the instant case, the petitioner could not have been denied the appointment against the post of Constable on the sole ground that he did not produce the requisite certificate before the Competent Authority at the time of responding to the advertisement notice. The petitioner did possess the qualification earlier also but the proof thereof only had to be furnished.

10/ Looking at the petition of the petitioner from yet another angle, all that has been shown by the respondents to glitter is not gold. The application form submitted by the petitioner, which is a part of the petition, does demonstrate that he applied for the post of Constable under the RBA category and consideration to his case has been skipped and shelved on a ground, which, per se, is incorrect. Annexure (A), attached to the counter affidavit filed by the respondent No.3, viz. Additional Director General of Police, Armed/Law & Order, J&K, Srinagar, portrays that the petitioner attached the RBA certificate with his application form and he applied for the post against the said category. The respondents could not have, therefore, dropped his case from consideration even if it be assumed but not conceded that the petitioner did not attach the RBA certificate with his application form. The respondents should have and were duty bound to ask the petitioner to produce the said certificate before them in case

it be said that the same was not attached to the application form, which they have not done.

11/ There is no denial of the fact that the petitioner was older in age as compared to those, who had obtained 26 points, which was the cut off merit for RBA category and, therefore, on the basis of clause (8), contained in the advertisement notice, which provides that in case there is a *tie* in the merit, preference will be given to the candidate being older age-wise, buttressed with the above discourse, the petitioner's case for his appointment to the post should have been taken into consideration. The application form of the petitioner bears testimony to the fact that he applied under the RBA category and, therefore, the respondents cannot turn around and say that the said certificate was not attached to the application form of the petitioner. The petitioner had to be considered under the RBA category, for which he applied and in case the certificate, depicting him to be so, was not attached to the application form, he had to be put on notice.

12/ Viewed in the above context, the petition of the petitioner is allowed. The respondents are directed to consider the case of the petitioner for his appointment to the post of Constable under the RBA category against the available post by excluding the candidate lower in age holding the post under the said category as compared to that of the petitioner.

13/ Writ petition is **disposed** of along with connected IAs as above.

TARIQ Mota
SRINAGAR
19-06-2018

(M.K.HANJURA)
JUDGE

